



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

### Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

### About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>





600009141L

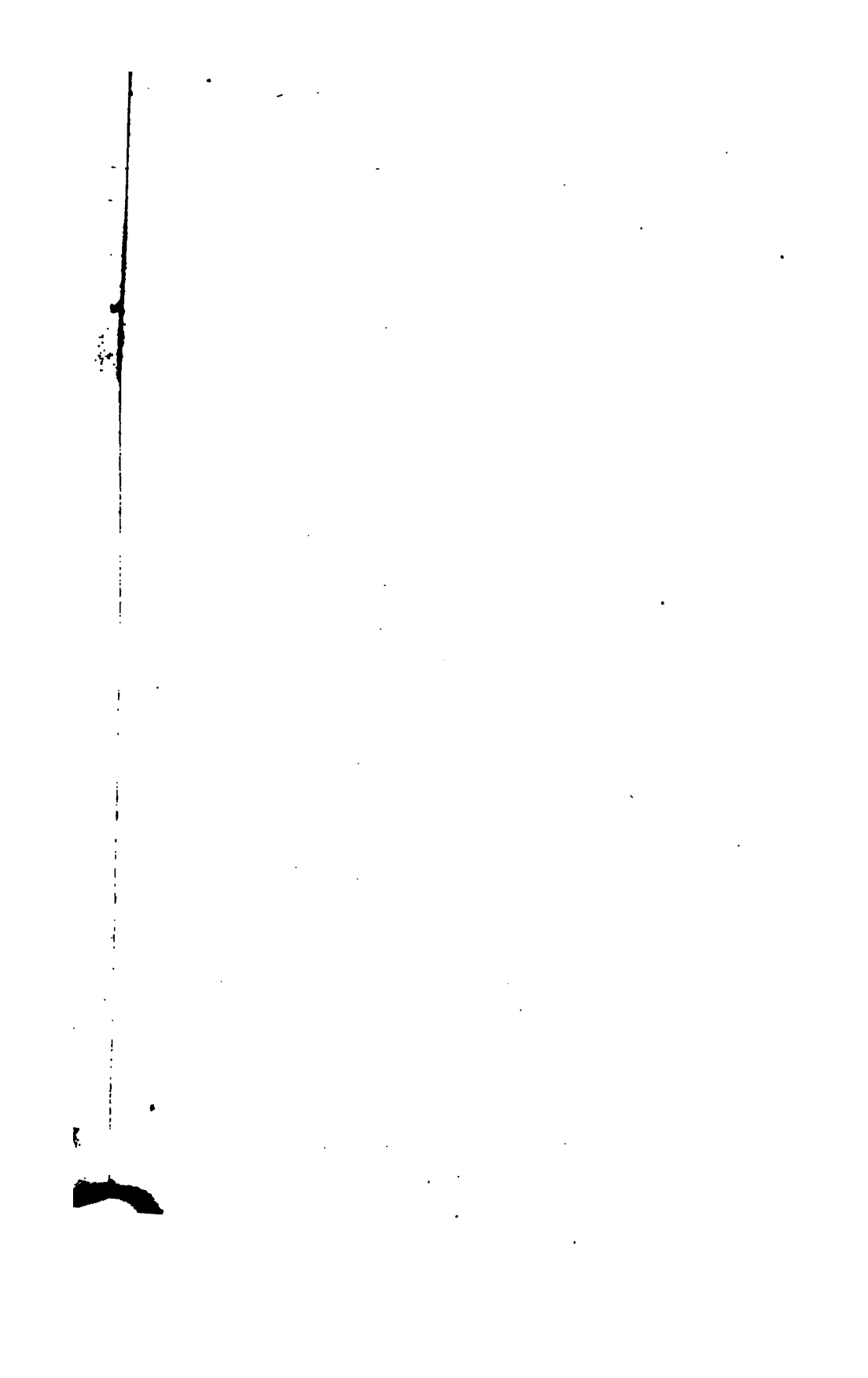
31

31.

432.







E. 5. 2. 132

**HISTORY**  
OF  
**THE REPRESENTATION**  
OF  
**England,**

DRAWN FROM RECORDS;

AND OF

THE JURISDICTION OF THE HOUSE OF COMMONS,  
TO REFORM ABUSES IN THE REPRESENTATION, WITHOUT  
THE AID OF STATUTE LAW.

BY ROBERT HANNAY, ESQ.

---

“ Lord Bacon, meeting the Earl of Middlesex, Lord Treasurer, said to him, between jest and earnest, that he would recommend to his Lordship, and in him to all other great officers of the Crown, one considerable rule to be carefully observed, which was ‘ to remember a Parliament will come.’ ”

PETTY'S MISCELLANEA PARLI. PREFACE.

---

LONDON:

PRINTED FOR

LONGMAN, REES, ORME, BROWN, AND GREEN,

PATERNOSTER-ROW.

1831.

432.



LONDON :  
Printed by A. & R. Spottiswoode,  
New-Street-Square.

# CONTENTS.

---

## CHAPTER I.

Introductory Chapter .....	1
----------------------------	---

## CHAP. II.

Of the Representation of Counties .....	31
---	----

## CHAP. III.

Of the Representation of Boroughs .....	156
---	-----

## CHAP. IV.

Of the Right of the House of Commons to reform Abuses in the Representation .....	228
--	-----





# HISTORY

OF

## THE REPRESENTATION.

---

### INTRODUCTORY CHAPTER.

**A**NOTHER era is arrived in the Constitution of England, long foreseen by the wise, by the powerful long dreaded, now awaited by all with intense and universal anxiety; and not without reason, for dangers encompass us around. We see neighbouring nations calming down from a vast convulsion, caused by evils deep seated in their social systems, exhausted for a time, only to burst forth anew.

We find among ourselves, year after year, increasing discontents. We have seen our Parliaments, until the present, slowly but gradually sinking in esteem; for complaints were addressed in vain, and grievances with effrontery denied, however open and notorious, until men looked no longer there to have their wrongs either listened to or redressed; and it became evident to all, that the Parliament no longer represented the Nation in its feelings, its intellect, or its interests.

Then did the common instinct of self-preservation drive men to seek shelter from the storm visibly approaching. They sought not in vain; they found it in themselves, in their courage, union, and justice, inherited from their forefathers, the foundation of all their rights, and their upholders too, through all successions of time.

To make known to my country what those rights are, is the object of this History, which becomes the more needful now, that the discussions in Parliament are closed. For some have treated of Reform by their ignorance, passions, and prejudices; some by their interests; some as a partial, others as a total change of the Constitution; some as a restoration of ancient rights, others as a novelty and usurpation; but none by the test of experience, evinced in the history of the Representation itself.

Be this our task. Duty to my Country demands it, having deeply studied the laws, practices, and principles of Parliaments; and to that added actual observation of those various countries of Europe wherein Constitutions are established by ancient usages or modern institutions.

But it is demanded, whence are those principles drawn? I answer, they are no fancies of mine, nor yet the idle conceits of other men's brains, but the principles and practices of your forefathers, considered, debated, tried, and by long experience found serviceable to the public good; till at length through the course of ages they became part of the Constitution, and the birthright of every man.

Another motive for this History proceeds from the nature of the public claims ; and here let it be observed, that I dismiss all consideration of particular measures of reform.

The nation appears at the bar of Parliament demanding a juster representation. Is this demand usurping and new, or is it a claim of right ?

Now, that which Englishmen claim is nothing beyond a restoration to their rights, by their forefathers immemorially enjoyed, as shall, in the course of this History, be made evident by records ; — rights of that nature, and of such there are many, which cannot be lost by any lapse of time or disuse, for so the legislature hath itself declared on many solemn occasions.

Is it not then of moment that those rights be known, upon what maxims founded, and by what course of conduct they were for many centuries maintained ?

But here it is asked, can the principles and practices of those early times be models fit for us ?

This question is of great weight, for it divides the world at this moment into two great parties ; and therefore I pray a moment's consideration for it.

On the one hand has hitherto stood England, maintaining firmly the ancient principles of her Social Government, but restoring from time to time, sometimes indeed after long intervals as now, those good customs that age had worn away, or frauds or

corruptions eaten into, according to the wants of society.

In her steps follow the United States, which have wisely and happily kept to those laws and institutions derived from ourselves, wherever their new and vast Empire, their changed circumstances, or some pressing necessity, has not required a corresponding change.

Of this party too, in Europe, is Hungary, with her ancient and free forms of government, so similar to our own. But above all, Sweden; second to no nation of the world in true freedom, political knowledge and capacity.

On the opposing party stands France. Her great Revolution found her debased and ignorant, by the joint empires of Superstition and Despotism. Of her ancient institutions, the few that were wise and just were lost in the many that were oppressive; the past was hateful, the future full of hopes; destitute of experience, she gave the helm to speculation, and called her wild course "*La méthode rationnelle*."

Twenty-five years (1789—1814) of revolution, civil wars, and slavery, under five different Constitutions, each in its turn designed by the interest of the faction in power, and coloured by the passions of each crisis, disclosed the true features of "*la méthode rationnelle*."

Such are the parties to this great contest between Experience and Speculation. But its merits, that is, the applicability of the past to the direction of

the future, admit of two different sorts of proof, the one abstract, the other by example.

The first involves the very nature of science in general, but more especially the antiquity, identity, and force of custom upon man, the diversities of his races, with their various inclinations and capacities; the enchainment of events from the past, through the present, to the future: no more to be broken by us, than is the blood of past generations to be shut out from the veins of posterity. But these are parts of knowledge yet in their infancy, and subjects that lie far beyond the present design.

Let us come, then, to example, the second mode of proof; the clearer and the surer too, for every day's experience strengthens that maxim, "that he who errs in the general, may yet judge rightly in the particular," "*Gli uomini ancora che s'ingannino ni' generali, nei particolari non s'ingannano.*"<sup>1</sup>

These examples are of three sorts: 1st, Of the past condition of society in England; for from man's condition are all Governments drawn, and for his benefit designed, however perverted by art; 2dly, Of the general notions and principles of Government in early times, the better to enable us to judge of their system of Representation; and, 3dly, Of their conduct in maintenance of their rights.

In examining the condition of society in England, it becomes necessary to select a particular time. The time chosen is the reign of Henry VI.,

<sup>1</sup> Discorsi, l. i. c. 47. Opere di Machiavelli.

and for two reasons: it was a time of civil wars and calamities, and the better condition may be judged of by the worse; and then began those abuses in the Representation to grow into a system, which have been left till now to be reformed.

I shall quote from a cotemporary, Lord Chief Justice Fortescue, a man of ancient family, who had devoted his youth to study the Constitution and Laws. In 1480, he was called to the degree of Serjeant at Law; eleven years after, he was made King's Serjeant; and on the 25th January, 1442, he was raised to be Lord Chief Justice of England, and continued so until 1460.

Henry VI. being driven from the throne, he accompanied his King into exile, where he became tutor to Edward Prince of Wales, and nominal Chancellor of England.<sup>1</sup>

Of the country, he says :—" England is so thick spread and filled with rich and landed men, that there is scarce a small village in which you may not find a knight or esquire, or some substantial householder, commonly called frankleyne, all men of considerable estates. There are others who are called freeholders, and many yeomen of estates, sufficient to make a substantial jury within the description before observed. There are several of these yeomen in England who are able to expend 100*l.* a year and more. Juries are often made up of such."—" Other countries, my prince, are

<sup>1</sup> Preface to the treatise *De Laudibus, Legum Angliæ*: Difference between absolute and limited monarchy.

not in such a happy condition, are not so well stocked with inhabitants. Though there be in other parts of the world persons of rank and distinction, men of great estates and possessions, yet they are not so frequent and so near situated one to another as in England; there is no where else so great a number of landowners.”<sup>1</sup>

Again, having explained to his pupil the Prince of Wales the free Government and just Laws of England, he adds: — “ Hence it is that the inhabitants are rich in gold and silver, and in all the necessities and conveniencies of life. They drink no water, unless at certain times, on a religious score, and by way of doing penance. They are fed in great abundance with all sorts of flesh and fish, of which they have plenty; every where they are clothed throughout in good woollens, their bedding and other furniture in their houses are of wool, where wool is fit, and that in great store. They are also provided with all sorts of household goods and necessary implements of husbandry. Every one, according to his rank, hath all things which conduce to make life easy and happy.

“ They are not sued at law, but before the judge ordinary, where they are treated with mercy and justice, according to the laws of the land; neither are they impleaded in point of property, nor arraigned for any capital crime, how heinous soever, but before the King’s judges, and according to the laws of the land.”

<sup>1</sup> De Laudibus Legum Angliæ, p. 98.



“ These are the advantages consequent from that political mixed Government which obtains in England. From hence, it is plain that the effects of that law are in practice which some of your ancestors, Kings of England, have endeavoured to abrogate.

“ The effects of that other law” (he had just before compared the condition of France under its despotism, with the condition of England under its free Government,) “ are no less apparent which they so zealously endeavour to introduce among us ; so that you may easily distinguish them by their comparative advantages. What, then, could induce Kings to endeavour such an alteration, but only ambition, luxury, and impotent passion, which they preferred to the good of the State ?”<sup>1</sup>

Thus much of the condition of the people : next let us consider their general principles of Government, following the same high authority : — “ The King is given for the kingdom, not the kingdom for the King ; whereupon it followeth that all kingly power must be applied to the wealth of the kingdom, which consisteth in the defence thereof from foreign invasions, and in the maintenance of his subjects and their goods from the injuries and extortions of the inhabitants of the same.”<sup>2</sup>

“ Power is always given for some good end or purpose ; and, therefore, to be able to do mischief, which is the sole prerogative an absolute Prince

<sup>1</sup> De Laud. Leg. Ang. p. 130., and Selden's ed. p. 85. and 86.

<sup>2</sup> Id. Selden's ed. p. 86. and 87.

enjoys above the limited, is so far from increasing his power, that it rather lessens and exposes it.”<sup>1</sup>

“ The King is appointed to protect his subjects in their lives, properties, and laws : for this very end and purpose he has the delegation of power from the people ; and he has no just claim to any other Power but this.”<sup>2</sup>

“ There is a favourite maxim or rule of state in the civil law, that ‘ that which pleases the Prince has the effect of a law.’ The laws of England admit no such maxim, nor any thing like it.” A King of England does not bear such a sway over his subjects, as a King merely, but in a mixed political capacity. He is obliged by his Coronation Oath to the observance of the laws, which some of our Kings have not been able to digest, because thereby they are deprived of that free exercise of dominion over their subjects, in that full and extensive form as those Kings have who preside and govern by an absolute regal power.”<sup>3</sup>

“ The King cannot despoil his subjects without making ample compensation for the same. He cannot by himself or by his ministry lay taxes, subsidies, or any imposition of what kind soever, upon the subject. He cannot alter the laws, or make new ones, without the express consent of the whole kingdom in Parliament assembled.” “ *Sine concessione vel assensu totius regni sui in Parlamento suo expresso.*”<sup>4</sup>

<sup>1</sup> De Laud. Leg. Ang. p. 42.      <sup>2</sup> Id. ch. xiii. p. 34. Selden's ed. p. 32.

<sup>3</sup> Id. p. 119. Selden's ed. p. 77.

<sup>4</sup> Id. ch. xxxvi. p. 128., and Selden's ed. p. 84.

“ The statutes cannot pass in England by the sole will of the King ; forasmuch as they are not made by the Prince’s pleasure, but also by the assent of the whole realm : so that of necessity they must procure the wealth of the people, and in no wise tend to their hinderance.”<sup>1</sup>

“ So that experience sufficiently shows you, my Prince, that those Ancestors of yours, who were so much set upon abolishing this political limited form of Government, had they been able to compass it, would not only have been disappointed of their aim and wish of enlarging their power thereby, but would by this means have exposed both themselves and their whole kingdom to far greater mischief and more imminent danger.”<sup>2</sup>

Having thus explained to his pupil, the Prince of Wales, the source, limits, and ends of the kingly power, Fortescue makes him answer in the following remarkable words :— “ I now perceive plainly that no nation ever formed themselves into a kingdom by their own compact and consent, with any other view than this, that they might thereby enjoy what they had, against all dangers and violence, in a surer manner than before. And the people would be in yet a more dismal state, if they were to be governed by strange and foreign laws, such as they had not been used to, such as they could not approve of. More especially if those laws should affect them in their properties, for the pre-

<sup>1</sup> De Laud. Leg. Ang. Selden’s ed. p. 40.    <sup>2</sup> Id. ch. xxxvii. p. 134.

servation whereof, as well as their persons, they freely submitted to the kingly Government. It is plain such a power as this could never originally proceed from the people, and if not from them, the King could have no such power rightfully at all.”<sup>1</sup>

This work of Fortescue on the Constitution, whence these quotations are drawn, bears a high authority, being addressed to a Prince of Wales by a Lord Chief Justice, written late in life, after long experience and thorough knowledge of affairs, and by a man honoured for his worth, learning, and capacity.

Nor are these the opinions of the Author only, nor of the age; they are the principles of the Constitution, the customs of England, as the records of Parliament abundantly prove, of which take the following examples: —

In the year 1414, 2 Henry V. the House of Commons declare, and thereupon pass a bill which became statute law, — “That it hath ever been their liberty and freedom that there should no law nor statute be made, unless they gave thereto their assent; considering that the Commons of the land, the which that is and ever hath been a member of the Parliament, be as well assentors as petitioners; that from this time forward, by complaint of the Commons of any mischief asking remedy, by mouth of the Speaker for the Commons, or else by petition written, that there be no law

<sup>1</sup> De Laud. Leg. Ang. ch. xiv. p. 40.

made thereupon and engrossed as statute and law, neither by addition, neither by diminution, by no manner of term or terms, the which should change the sentence or intent asked by the Speaker's mouth, or the petition aforesaid given up in writing, without the assent of the said Commons." <sup>1</sup>

Again, in making war, the principle of the Constitution, and its practice too, was this, that the king could enter upon no offensive war without the consent of Parliament first asked and obtained. What needed for its support the lives and properties of all, needed likewise the permission of all; or, as Richard II. says, in his speech from the throne to the parliament, "That common defence requires common charge, which exceeds the riches of the three richest Kings of Christendom, without the aid of their subjects." <sup>2</sup>

This right of the Nation to determine upon the necessity of war is of the highest antiquity, and was uniformly maintained while Parliament preserved its independence, as is proved by Sir Robert Cotton, in his Treatise on the Intervention of Parliament in Declarations of War, deduced from infinite Records. <sup>3</sup> Of which take the following as an example: —

"In the year 1347, Edward III. caused Sir Bartholomew de Burgersh to attend the commons, and explain to them the state and condition of the

<sup>1</sup> Rot. Parliam. 2 Hen. 5. No. 10. § 22.

<sup>2</sup> Rot. Parl. 7 Ric. 2.

<sup>3</sup> MS. Brit. Mus. Harg. Coll. No. 225.

war, and to demand whether the Commons were inclined to assent to peace, "because this war was undertaken and begun by the Common consent of the Prelates, great men, and Commons; and the King does not desire to treat for peace without their common consent."

"And the lords are requested to assemble in the White Chamber on a certain day, and the commons in the Painted Chamber, severally to hear, consult, and assent upon peace or war."

"The Lords delivered their assent to an honourable and profitable peace. The Commons request the King to send a solemn embassy to propose peace, and in case the King can make an honourable peace, that he will accept it; and in case he cannot, the Commons will aid and support him with all their power."<sup>1</sup>

Secondly, Of Taxation. The records of Parliament contain infinite materials regarding taxation, which are, however, all reducible under three general principles:—

1st, That no Tax, Subsidy, nor Custom could be legally granted, assessed, or levied, unless by authority of Parliament.

This had been in all times the law of the land, and was declared by the statute de Tallagio, 25 Edw. I. in the year 1297, which ordains, "That no tallage or aid shall be taken or levied by us or our heirs in this realm, without the good-will

<sup>1</sup> Rot. Parl. 17 Edw. 3. § 8.

and assent of the Archbishops, Bishops, Earls, Barons, Knights, Burgesses, and other Freemen of the land."

And the Parliament adhered so strictly to this right, that they would not suffer the Merchants to grant an increase of custom, though paid immediately by themselves: "for it is against all reason that the commonalty should be charged on their goods by merchants."<sup>1</sup>

2dly, That in money grants no one class of men either had or ever pretended a right to tax those classes to which they did not themselves belong; but every condition was liable only for grants made by those who directly represented them.<sup>2</sup> Thus, the Clergy voted the money payable by the Clergy, the Lords that by themselves, the Knights for the landed men in counties, and the Burgesses for cities and towns, each according to their several abilities, to themselves best known.

3dly, That although taxes and grants of money, customary and wonted, could be voted by the general powers of Parliament, yet when extraordinary aids were needed, the Commons had no right to grant such, until the consent of their Constituents had been first asked and obtained; of which take the following example:—In the year 1389, King Edward III. having requested an aid in money, the House of Commons returned this answer, "The Members who are present in this

<sup>1</sup> Rot. Parl. 27 Edw. 3. No. 27.

<sup>2</sup> Rolls of Parl. *passim*.

Parliament for the Commons have learned the condition of our Sovereign the King, and the great necessity he has of aid from his people; and knowing that the said aid is great, they have good-will to grant it, as they have had in times past. But as the aid sought is great, they dare not assent to the grant, until they have consulted and advised with the Commons their constituents. Therefore they request that another Parliament may be summoned<sup>1</sup>;” which was summoned accordingly.

June 20. 1604. This ancient and fundamental principle of the Constitution we find recognised in that celebrated Declaration of Rights, drawn up by the House of Commons upon the accession of the Stuarts, wherein they declare that the privileges and liberties of the House of Commons are the ancient rights of the subject, not less than his very lands and goods; and among others they insist upon this, in the following words: — “Neither yet durst we impose by law the grant of revenue demanded upon the people, without first acquainting them, and having their assent unto it.”

Nor let it be thought that this subjection of the Commons to their Constituents proceeded from ignorance of the great principle of Parliamentary law<sup>2</sup>, “That every member, though chosen for one particular district or place, when elected, serves for the whole realm; because he is not barely to advantage his Constituents, but the Commonwealth.”

<sup>1</sup> Rot. Parl. 13 Edw. 3. § 8.

<sup>2</sup> Black. Com. vol. i. p. 159.



This has in all ages been a principle recognised ; but in early times it was limited to the enactment of laws, not misapplied, as in later times, to the granting of money, which has nothing either of the form or of the nature of laws, but is a free-will gift of the subject. And such it is considered still, and declared to be in the celebrated Poll-Bill of 1689<sup>1</sup> : — “ That all money, aids, and taxes to be raised or charged upon the subject in Parliament, are the gift and grant of the Commons in Parliament, and presented by the Commons in Parliament ; and are, and always have been, and ought to be, by the Constitution and ancient course and laws of Parliament, and by the ancient and undoubted rights of the Commons of England, the sole and entire gift, grant, and present of the Commons in Parliament.”

But in times of urgency and danger the Parliaments did sometimes from necessity exceed their wonted powers, by granting extraordinary supplies to meet the pressing need. But these were the exceptions, not the rule. The Constitution of the country is not to be judged of from times of danger, but from times of tranquillity, no more than is its climate from the equinox or the storm.

And now we come to the third class of examples, namely, the Conduct of your Forefathers in defence of their rights.

After the Norman invasion, the first great era in

<sup>1</sup> Commons' Journals, vol. x. p. 134.

constitutional history was the enactment of the Great Charter of your liberties, in the year 1215. It is not my intent to enter upon its history ; a few observations shall suffice, such as best merit regard.

King John, by extortions upon his subjects of all ranks, by numberless frauds, by waste and gross debauchery, by violence to women of virtue, by the disregard of all law, constitutional and civil, — but most of all by the employment of foreigners in great offices of state, and subjection of his crown to the papal power, — at length roused his subjects to arms. Some modern historians affect to see nothing in this great event, save factious nobles wresting power from their Sovereign : but the records of those times prove far otherwise ; for they prove the universal union of interests and feelings throughout England, all men of all conditions in country and in towns, — the great nobles, the private gentlemen, the citizens, the burgesses, the freemen, — ranked under the same banner for the same end, the recovery of their rights.

“ The King returned to Odiham in Hampshire, deserted by almost all his followers, with but seven lords who remained in his court.”<sup>1</sup>

Again we see the people, though forced to assemble in arms, though invested with the sovereign power of the state, attempt no violence nor injustice.

<sup>1</sup> Blackstone's Hist. of the Mag. Carta, p. 295. Patent Rolls, 17 John, M. 23d.

Their ends were their rights, — not the vague abstract notions of hot or idle brains, but the laws of their forefathers, the usages of better times ; such as they had known by experience to be good, those they resolved to maintain : for the historians of those times are agreed, that the Great Charter contains little of any thing beyond a declaration of the rights and customs of their ancestors.<sup>1</sup>

The second great event in constitutional history, is the trial and deposition of Richard II.

This young Prince began his reign under many disadvantages ; the times were troublesome, the kingdom embroiled with wars abroad and distractions at home. Minority rendered him unequal to his duties ; and no sooner had he arrived at manhood than he set himself in opposition to his people.

As this is among the most important events in English history, let us consider it with attention.

In 1386 Richard, being yet a minor, withdrew himself from the presence of his Parliament, contrary to the ancient laws and customs. The Parliament remonstrated against the ill government of the kingdom, and charged his ministers.

The King, or rather the council, answered, "That now he saw the people and the commons intend to resist ; and in such case nothing seems better than to call in the King of France, and from him to ask advice and aid."

But the Parliament were not to be daunted : they

<sup>1</sup> Blackstone's Hist. of the Mag. Carta, p. 265. 290. 296. Petyt's Rights of the Commons, Append. p. 137.

replied, that this counsel was not safe ; that the King of France was his enemy ; and farther added the following remarkable and prophetic words : — “ We have an ancient Constitution ; and it was not many ages since experimented (it grieves us we must mention it), that if the King, through any evil counsel, or weak obstinacy, or contempt of his people, or out of a perverse or forward wilfulness, or by any other irregular courses, shall alienate himself from his people, and refuse to govern by the laws and statutes of the realm, according to the laudable ordinances and their faithful advice, but will throw himself headlong into wild designs, and stubbornly exercise his own singular arbitrary will, that from that time it shall be lawful for his people, by their full and free assent and consent, to depose that King from his throne, and in his stead to establish some other of the royal race.”<sup>1</sup>

Richard and his council affected to yield ; and upon the demand of the Parliament created certain persons by letters patent, in whom the people had confidence, to manage the public affairs until the King should be of full age, which would happen in two years.

But no sooner was the Parliament dissolved than the King began to raise forces to break through these restraints. But he found the people disinclined, persuaded that Parliament had acted for the best. His next device was to summon a council of such

<sup>1</sup> Hist. of Parl. vol. i. p. 187. and Rapin's Hist. vol. i. book 10. p. 463.

as he fancied he could gain or overawe; and required of them that they should not suffer any to be returned knights or burgesses to the next Parliament but such as the King and his council should nominate: to which they made answer, "That the people would very hardly be deprived of their ancient privilege of choosing their own members of Parliament; and that if there was a true freedom observed in choosing, it would be almost impossible to impose any person against the people's will, especially as they would easily guess at the design, and stand the more resolutely upon their rights."<sup>1</sup>

Thus unable to pack a Parliament, as a last resource the King assembled the Judges, and demanded of them, 1st, "Whether the new statute, ordinance, and commission made and published by the last Parliament was not derogatory to the royalty and prerogative of the King?" To which they unanimously answered, "That it was derogatory, especially as against his will; and that the King was above the laws."

2d, It was demanded, "How those who had procured that statute to be passed were to be punished?" The Judges answered, "They were traitors, and were to be punished with death."

These answers the Judges signed and sealed in the presence of the Archbishop of York, and several other bishops and nobles of the King's council.<sup>2</sup>

The nation would not brook this insult; and,

<sup>1</sup> Hist. of Parl. vol. i. p. 194. Rapin's Hist. vol. i. book 10. p. 464.

<sup>2</sup> Hist. of Parl. vol. i. p. 194. and Rapin's Hist. vol. i. book 10. p. 463.

accordingly, the Parliament that assembled in 1388 impeached the chief actors, while they acquitted the King, on account of his youth.

The Lord Chief Justice Tresilian was condemned and executed, the rest were imprisoned for life.

Thus began Richard's reign : " bad begins, and worse remains behind ; " folly, waste, crimes, and oppression marked its course, till at length, the patience of men being worn out, they were reluctantly driven to that which has ever been held to be the last sad resource of a people — the trial and deposition of their Sovereign.

The Parliament assembled in 1399, by an unanimous assent, agreed upon thirty-three charges against Richard, each stating the law and its violations. " The Parliament charges him with wasting the wealth of the crown, and bestowing its lands upon worthless persons, thereby rendering new taxes necessary ; with forcing the Judges to sign opinions contrary to the laws ; with the murder of the Duke of Gloucester ; with having seized, imprisoned, and fined many persons without trial or judgment, without the benefit of defence, and contrary to law ; with the destruction and erasure of the records of state ; with the exaction of money from the people throughout seventeen counties ; with having oftentimes asserted, in the presence of many lords and commons, ' that the life of every subject, and his lands and goods, depend upon his will, without any forfeiture ; ' with setting up his own arbitrary will against the statute law ; with

submitting the statutes of the realm to the Pope for confirmation, although the crown of this realm is, and ever has been, imperial and free.”

But especially they charge him with violation of the elective right, in the following terms :— “ Art. “ 20th. Although by statute and custom of this “ realm, upon the summons of every Parliament “ his people in every county ought to be free to “ elect and depute representatives for each county, “ to be present in Parliament, there to set forth “ their grievances and to obtain remedies for the “ same as to them may seem good ; yet the said “ King, that he might the more freely obtain in “ Parliament his own rash will, directed mandates “ to his sheriffs that certain persons therein named “ should be returned to Parliament as knights of “ shires, (whom he had gained to favour him, some- “ times by threats and various terrors, and some- “ times by bribes,) to consent to those measures “ the King proposed, though prejudicial and bur- “ densome to the people, and especially to grant “ a tax on wools to endure for his life, and another “ tax for certain years, to the extreme oppression “ of his subjects.”<sup>1</sup>

The Parliament, in deposing Richard, declare that they adhere to the ancient custom of Parliament. The record says, “ And since it appears to all the states of the realm, interrogated severally and in common, that these crimes and defects are sufficient for the deposition of the said King, and

<sup>1</sup> Rot. Parl. 1 Hen. 4.

of themselves notorious ; and considering also the King's confession of his inability, and cession and renunciation openly declared ; all the said estates have unanimously consented that they should proceed to the deposition of the said King, for the security, tranquillity, and advantage of the people."

" Therefore the states and commons aforesaid have chosen certain commissioners, namely, the Bishop of St. Asaph, the Abbot of Glastonbury, the Earl of Gloucester, the Lord Berkeley, Sir Thomas Erpingham and Sir Thomas Gray, knights, and William Thirning, justice, and unanimously constituted and publicly deputed them to pronounce sentence of deposition, and to depose the said Richard from all dignity, majesty, and honour of kingly power, in the place and the name and by the authority of all the estates of the realm, as in similar cases by ancient custom of the said realm has been wont to be observed."<sup>1</sup>

Then follows the solemn sentence. " In the name of God, Amen. We, the Bishop of St. Asaph, for the archbishops and bishops ; the Abbot of Glastonbury, for the abbots, priors, and other churchmen ; the Earl of Gloucester, for the dukes and earls ; the Lord of Berkeley, for the barons and baronettes ; Sir Thomas Erpingham, chamberlain, for all the bachelors and commoners of this land of the south ; Sir Thomas Gray, for all the bachelors and commoners of this land of the north ;

<sup>1</sup> Rot. Parl. 1 Hen. 4.



John Martham, Lord Chief Justice, and the William Thirning, Chief Justice of the Common Pleas; by the peers of this kingdom of England, temporal and spiritual; and the commons, representing all the states of the realm; commissioners specially deputed and sitting as a tribunal, for the manifold perjuries, cruelties, and crimes against the kingdom perpetrated in the time of his government, and publicly proposed; exhibited, and recited, and these crimes being public, notorious, and manifest, that could not be denied, and being confessed by Richard himself; for these causes he is unworthy of the government, and of the royal power and dignity: we therefore pronounce, discern, and declare, and depose him by our definitive sentence —”

“Expressly forbidding all archbishops, bishops, prelates, dukes, marquesses, earls, barons, vassals, valvasors, and other men of the said kingdom and other places, to acknowledge Richard as king.”<sup>1</sup>

I have dwelt the longer upon this solemn scene, because of our modern historians; some have slightly passed it by, others have treated it as the work of a faction, but none have faithfully followed the coeval records, whence only the truth can be drawn.

And now we are arrived at the third, and last, great era in the constitutional history of England, that revolution which drove James II. from the throne.

<sup>1</sup> Rot. Parl. 1 Hen. 4. from § 18. to § 60.

It is not my intention to detail an event so recent and well known ; but the points wherein it is like, and wherein it is different from, the two former revolutions are well worthy of remark.

First, Of the conduct of the King. The Stuarts, upon their accession to the English throne, began immediately to act upon the same settled system they had pursued so successfully in Scotland, of raising their personal power over the authority of Parliament, but in different degrees more strained or more lax, according to their bigotry and courage.

The times were favourable to this attempt ; for England was divided by the spirit of religion. James I., with the cunning and treachery inborn in his race, affected and conformed to the Protestant faith, whilst in secret he continued a papist, and had given secret pledges to the Pope, still extant, to restore his supremacy so soon as that was in his power. His son and grandsons followed in his footsteps : constitutions renewed, declarations of right, the punishment of ministers, the execution of one king and the banishment of his family, the failure of all their schemes, served but to delay, never to turn, them from their objects — the establishment of superstition and despotism.

At length came a man like Loyola, at once a soldier and a bigot. There is a honeymoon in reigns as in marriages ; the worst-matched begin with smiles and professions, though ending in wrangling and divorce.

James II. affected popularity and observance of

the laws until he had obtained a revenue, then threw off the mask. The servile Parliament winked at his bigotry, cruelty, and cunning, and affected implicit confidence in his professions. I know not that his fixed unalterable design can be more forcibly expressed than in the words of an intercepted letter of a jesuit.

“ He (James II.) declared he would convert England or die a martyr; that he should prefer the life of one day with the comfort of having converted his people, before a reign of fifty years without this consolation; that he looked upon himself as a true child of the Society of Jesus, the advantages of which were as dear to him as his own; that it was not possible to express how much his Majesty rejoiced when he heard that the Pope had admitted him to a share of all the merits of the Society.”<sup>1</sup>

This was the spring and fountain-head whence all his actions flowed. The Declaration and Bill of Rights charge the exiled King with twelve several violations of the laws and liberties of the kingdom: these charges are almost a repetition of those against Richard II. In both we see the same perjuries and treachery, the same defiance of the laws, the same rapacity, the same cruelty; cruelties which not the brutal Jeffreys could satiate, as on his death-bed he confessed. But what is truly worthy of remark in

<sup>1</sup> Negotiations of Count D'Aveaux, ambassador of Louis XIV. to the States General, vol. iv. p. 122.

all these three eras, so widely distant in time, that which at length roused the nation to arms, was in each instance the bigotry and submission of their Princes to the papal power ; serving as examples of what all history is full, that despotism and superstition are inseparably linked by interests which time cannot change.

One charge more remains to be noticed. He is therein arraigned, in the seventh, of “endeavouring to subvert the laws and liberties of the kingdom,” “by violating the freedom of election of members to serve in Parliament.” These violations were of several sorts: 1st, By prosecuting the plan of Charles II., who had procured by force or fraud the surrender of charters to cities and boroughs returning members to Parliament, and granting them again in new forms more favourable to arbitrary power. Sometimes this had been done under the colour of law, as in the seizure of the liberties of London, sometimes by open force, sometimes by threats, often by bribery, but all upon one design to bring the government of the towns into as few hands as possible, and establish popery at the bottom of all.

2d, By arts so happily described by Bishop Burnet.<sup>1</sup> “All arts (says he) were used to manage elections so that the King should have a Parliament to his mind. Complaints came up from all parts of England of the injustice and violence used in elections, beyond what had been practised in former

<sup>1</sup> Burnet's Hist. of his own Times, vol. i. p. 625.

times: and this was so universal over the whole nation, that no corner of it was left neglected. In the new charters that had been granted, the election of members was taken out of the inhabitants and restrained to the corporation men; all those being left out who were not acceptable at court.

“In some boroughs they could not find a number of men to be depended on, so neighbouring gentlemen were made the corporate men; and in some of these persons in other counties, not so much as known in the boroughs, were named. This was practised in the most avowed manner in Cornwall, by the Earl of Bath, who, to secure himself the groom of the robes’ place, which he had held all King Charles’s time, put the officers of the guards’ names in almost all the charters in that county, which sending up forty-four members, they were, for the most part, so chosen that the King was sure of their votes on all occasions.”

From the conduct of the King, let us turn to the feelings of the people. “During the two last years of James II.’s government (says Lord Somers), we were given up as a lost nation by all our friends in Europe, and did think so too ourselves; it being impossible for us to imagine whence our relief would come.”<sup>1</sup>

In this crisis, while the sword of civil war hung by a hair, the feelings of the people were intense. Bishop Sherlock thus describes them<sup>2</sup>:—“Oh that

<sup>1</sup> Vindication of the Convention Parliament.

<sup>2</sup> Sermons, vol. v. p. 158.

I had words to represent to the present generation the miseries their fathers underwent ; that I could describe their fears and anxieties, their restless nights and uneasy days, when every morning threatened to usher in the last days of England's liberty, when men stood mute for want of counsel, and every eye was watching with impatience for the happy gale that would save the kingdom, whose fortunes were so low as to depend upon the chances of wind and weather !”

To the courage and capacity of England and of Scotland at this great crisis, we owe the liberties we now enjoy. Then honoured be this era in our history !

In later times the Convention Parliament has been blamed for leaving so much undone : but dangers were gathering around, success depended on despatch, and the nation demanded an immediate settlement of the Government. The immortal leader of the Revolution urged a conclusion in these words : — “ Next to the danger of unreasonable division among yourselves, nothing can be so fatal as too great delay in your consultations.”<sup>1</sup> And events soon verified his advice.

Of the grievances accumulated by the Stuarts upon the nation, many were happily redressed in the moment of danger, the rest were reserved for after reforms. But with the danger passed away the fear, and with the fear the only bond of union :

<sup>1</sup> Journals of the Commons, 12th January, 1688.

then factions, selfishness, and cunning resumed their wonted sway.

Here we close this branch of the subject. What has been said is designed for the better understanding of what follows; for without just thoughts of the general principles of the ancient constitution, and of the conduct of your forefathers in defence of their rights, difficulties insurmountable would occur in any enquiry into their representative system.

## CHAP. II.

## OF THE REPRESENTATION OF COUNTIES.

OF the two departments of the representative system, this of counties has been the least altered from its original. For though the right of election be limited by a statute, obtained as shall be proved by base means, to serve baser ends ; yet still it is simple, uniform, easy of proof, and by commerce and increased riches now easy of acquirement.

In the year 1429, the eighth of Henry VI.'s reign, began a long series of encroachments upon the constitution, the motives for which shall hereafter be shown. Of these, the first was that celebrated statute for disfranchising all electors in counties who did not possess freeholds of forty shillings yearly held of the King, a sum then considerable.

Before this period, elections in counties had been made agreeably to the ancient customs of England. Some few statutes there were, as that of 3d Edward I.<sup>1</sup>, which ordains that " all elections shall be free ;" or that of 46 Edward III.<sup>2</sup>, that all persons and communities summoned to Parliament shall there attend ; or those of 7 Henry IV. c. 15.<sup>3</sup>

<sup>1</sup> 3 Ed. 1. c. 5. 1275.

<sup>2</sup> 1n 1372.

<sup>3</sup> In 1405.



and 11 Henry IV. c. 1.<sup>1</sup> against sheriffs for intermeddling in elections and false returns ; or, lastly, that statute of 1 Henry V. c. 1.<sup>2</sup>, which ordains that the knights, citizens, and burgesses shall be resident in the counties or towns they represent.

But these statutes were either merely declaratory or confirmatory in the main of the ancient customs of the land. It was reserved for this law, the 8th Henry VI., in the year 1429, which still regulates elections in counties (under some partial modifications), to disfranchise a vast many, perhaps the greater number, of those who had, until this period, possessed the elective right.

Who were by this statute disfranchised has in later times been much in dispute. Some have held, as Mr. Bacon<sup>3</sup>, that before this time every freeman of English blood exercised the elective right ;” or with Mr. Prynne<sup>4</sup>, “ that before this act, every inhabitant and commoner in every county had a voice in the election of knights, whether he was a freeholder or not, or had a freehold only of a penny, sixpence, or twelve-pence by the year, as they now of late claim in most cities and boroughs where popular elections are admitted.”

But the prevailing opinion in modern times has been, that before this law, freeholders were the

<sup>1</sup> In 1409.

<sup>2</sup> In 1413.

<sup>3</sup> History of the Government of England, p. 78.

<sup>4</sup> Bredia Parl. Red. note, p. 187.

sole electors, to the exclusion of all others ; and that this statute of Henry VI. disfranchised none but those whose freeholds were under the value of forty shillings yearly.

And this, their opinion, they ground upon a prevalent notion that when the freeholders grew too numerous for personal attendance in Parliament, they chose representatives in their stead ; but that none were in Parliament either in person, or by their deputies, except such as held freehold lands immediately of the crown, called in law the *Tenentes in capite de rege*. Thus they suppose Parliaments to have been the creatures of the feudal law, and limited by the feudal tenures.

It enters not into the limits of this History to discuss this question, which would require a treatise for itself ; but the observations that follow are due to the reader.

If we enquire into the antiquity of Parliaments in general, we find them coeval with society ; if of the countries where established, we find them universal as reason and the sense of human-kind ; for no people that history makes mention of but, at some period of their social state, possessed a voice in the making of those laws whereby they were to be governed.

But our business is with the Parliaments of England, and them you owe to your Saxon ancestors. Wherever this race of men conquered or colonised, they carried with them those wise and free forms of

government immemorially established in Germany and Scandinavia. Nor was this system a rude outline, the mere childhood of society and government, but, as is evident from their histories, laws, and records, (with one sad exception, their slaves,) the nation was then, as now, distinguished into different ranks, with different rights and duties peculiarly known and respected.<sup>1</sup> Of these several conditions of men, their great Councils or Parliaments were formed.<sup>2</sup>

Antiquity conceals from us the minuter traits of the Saxon Constitution, but its great and bold features remain distinct and clear.<sup>3</sup> It is certain that by ancient custom the common councils of the kingdom were assembled yearly, or oftener, if occasion pressed, summoned by the King, and wherein he presided as head and chief.<sup>4</sup> It is certain, that to them were summoned dukes, earls, ealdermen, ministri, thegns, and milites or knights, besides many more without any designation of legal rank.<sup>5</sup> But whether these knights sat by personal right, or by election of counties, is doubtful: a question more curious than important; for as in reason and in law, so according to the usages of England, the personal right has in all ages included the elective. Neither is it known of what condition those members were who want a legal de-

<sup>1</sup> Wilkins's *Saxon Laws*, *passim*.

<sup>2</sup> Turner's *Hist. of the Anglo-Saxons*, vol. iii. p. 253—255.

<sup>3</sup> *Id.* vol. iii. p. 242, 243. 246.

<sup>4</sup> *Id.* p. 208.

<sup>5</sup> *Id.* vol. iii. p. 212. 220—222.

signation, but it is plain they were of ranks inferior to knights.

In some Parliaments, we find "villani"<sup>1</sup> sharing in the legislation; in some, the "patriæ procuratores;"<sup>2</sup> in some, members are mentioned "who had no lands."<sup>3</sup> The preface to the laws of King Alfred granted to the Danes, says that they were made "ex sapientum Anglorum et eorum omnium qui orientalem incolebant Angliam consulto." Of the Confessor's laws it is said, "Hæc concessa sunt a rege baronibus et populo." Again, the historians who wrote nearest to these times treat of the Parliaments as consisting of "totam regni, nobilitatem, populumque minorem;" or "in generali senatûs et populi conventu;" or of "proceres et populus totius regni." These and similar expressions occur continually in the early histories.

Again, it is most certain that in the Saxon Parliaments, not only the higher dignitaries of the church were present to maintain the interests of their order, but the clergy of all conditions, as archbishops, bishops, abbots, priors, presbyters, and deacons.<sup>4</sup>

In fine, it is evident that legislation was in those early times not the peculiar and exclusive privilege of any one class of men, but shared by the freemen at large.

<sup>1</sup> Laws of Ethelstan, Ap. Brompton Chron.

<sup>2</sup> Monast. vol. iii. p. 119.

<sup>3</sup> Turner's Anglo-Saxon Hist. vol. iii. p. 228.

<sup>4</sup> Hody's Hist. of Convocations, p. 18. to p. 142.

Nor was attendance in Parliament dependent upon feudal usages, nor upon tenures in land, because those were unknown to the Saxons; such as they are described in the books of the Fews, and practised by the Normans in after-times.

The sum of all is this, that Parliaments, formed of freemen of all conditions, had become, by immemorial usage, deep rooted in the affections of our Saxon ancestors, with the design that no laws should be made, no monies levied, nor any course pursued in peace or war, but by the steerage of the people thus placed by the helm of state.

2. From the Norman Conquest until the enactment of the Great Charter of Runimede is a period of one hundred and fifty years. No part of English history has been so grossly misrepresented by modern writers as this, much from ignorance of the Saxon laws, but more from servility to power, ever inclined to derive the government from conquest, and the public rights from the Sovereign's grace.

It has been asserted with confidence, that the Saxon Constitution sank under the Norman despotism; that the prerogative, hitherto restrained within known limits by laws and usages, now became absolute; that the Parliament, hitherto formed of all conditions of freemen vested with supreme legislative powers, now shrunk into a council of state, composed exclusively of the greater nobles, and dependent on the Monarch's will. Lastly, that property itself became the prey of power; although,

from the delight in its acquirement, and security in its enjoyment, are derived whatsoever we see of arts and civilisation among men.

Yet these assertions are certainly false. But here be it marked, that I speak of the known laws and customs of the kingdom, not of the exorbitances on either side, — the crimes of kings or subjects; enormities that cannot be defended, no more than can robbery or murder.

Let us pass from modern opinions to ancient facts. It is evident from contemporary history that William Duke of Normandy claimed the crown of England by virtue of a will, real or pretended, of Edward the Confessor; that he was invited by a powerful party in England, opposed to the Danish sovereignty, who considered the victory of Hastings not as a conquest over England, but over Harold, who had usurped the throne.<sup>1</sup>

Accordingly, upon the coronation of William, on Christmas day, 1066, the same forms were observed that had been customary upon the accession of the Saxon kings; namely, the Parliament voted his election, and then administered the ancient oath, to defend the church, to govern the people in justice, and to enact and maintain just laws.<sup>2</sup>

Again, in the fourth year of his reign a Parliament was summoned, to which twelve men were

<sup>1</sup> Sir Matt. Hale's *Hist. of the Common Law*, p. 87—89.

<sup>2</sup> *Gesta Gul. Ducis*, p. 202.; *Florence of Worcester. Vitalis, Eccles. Hist.* lib. iii.

chosen for every county, who drew up a collection of the laws and customs of England, known by the name of king Edward's laws, but in truth the laws of the Saxons, which experience had made dear to all. William inclined to introduce the Norman usages; but the Parliament resisted this attempt, and unanimously demanded "that they might have their own laws and ancient customs, in which their fathers had lived and they themselves had been born and bred." The King yielded to the Parliament, having obtained the admission of some Norman usages, perhaps with justice, to the families of that nation then settled in England.<sup>1</sup>

It is worthy of remark, that in this same Parliament the celebrated Lanfranc was chosen Archbishop of Canterbury, according to the practice of those times, whereby the King nominated the bishops with the advice of Parliament. "The King committed the church of Canterbury to him, consensu et auxilio omnium baronum suorum omniumque episcoporum et abbatum, totiusque populi Angliæ."<sup>2</sup>

Some encroachments having been made upon the Saxon Constitutions, they were again confirmed in Parliament in the sixteenth year of this reign, of which no year passed over without an assembly of Parliament, those excepted when the King was in Normandy.

<sup>1</sup> Hoveden, p. 343. and p. 357. Charter of Hen. I. in M. Paris. Preface to the Laws of King Edward. Selden's Tit. of Hon. p. 701. and Notes on Eadmer, p. 171., and Sir M. Hale's Hist. of the Common Law, p. 104—108.

<sup>2</sup> Vitalis, Eccles. Hist. l. iv. Taylor's Hist. of Gavelkind, Appendix.

The concurring testimony of contemporaries leaves no doubt that those Parliaments were held in the same places, at the same times as before, and in obedience to the ancient Constitutions; and that they were not exclusively composed of one class; but, as the Saxon Chronicle<sup>1</sup> assures us, "there were assembled all the chief persons of England; archbishops, bishops, earls, thanes, and knights." The laws themselves prove that they were enacted by the "barons and people,"<sup>2</sup> by the "barons and commons," by "the common council of the whole kingdom;" and there were present, if certain charters may be relied upon, granted by William, "the representatives of counties and towns." And here I think it good to observe of the credit due to ancient charters, that although their evidence may be suspected in particular facts favourable to their interest; for example, exemption from jurisdiction, — yet, of the general and established customs of the kingdom, they may be admitted without scruple, when written in or near to that age they concern: because these charters are (with few exceptions) instruments in the possession of communities, as cathedral and abbey churches, whose heads were present in Parliament, and could not be ignorant whether counties and towns were represented there, nor could desire to assert a falsehood so notorious that would prove the instrument itself a forgery. And this distinction, between the evidence of particular facts, and of general customs,

<sup>1</sup> Saxon Chron. p. 190.

<sup>2</sup> Selden's ed. of Eadmer.



is sanctioned by the analogies of law and of experience in cases similar.

Thus much of Parliaments; let us now pass to the alleged forfeitures of property.

The Saxon Chronicle relates, that, in the year 1085, a Parliament was held at Gloucester, where, after much discussion, a survey of England was ordered. This great work, when completed, was transcribed and arranged, and has been happily preserved in the Domesday books, — a national monument truly venerable; for, from personal knowledge of foreign archives, I can assure the reader that this is the most ancient record extant in Europe of the freedom of the people and the limited prerogatives of the crown. For herein we see that the royal claims were not determined by arbitrary power, but by juries legally chosen, whose verdicts fixed the rights of the poor as of the rich; for sometimes the question regards a few acres, or a few roods, and even a few feet of land.

Of this famous record Sir Matthew Hale observes: — “It is most apparent by the Book of Domesday, compiled by his command, that the former laws were then in force, and that the former owners held their possessions, and those that were ejected from them recovered their possessions, by assize of mortancestry, and that the King contented himself with those domains that were *terræ regis Edwardi*.”<sup>1</sup>

And here I feel satisfaction in confirming what

<sup>1</sup> Sir M. Hale's *De Prerogativa Regis*, p. 12. MS. Brit. Mus. No. 94. Hargr. Coll. and Hist. of the Common Law, p. 95—97.

has been said of this important period by the authority of a man so profoundly learned and wise. Sir Matthew Hale, in treating of the English Government during this reign, observes :—“ The sum of all is, that it plainly appears, —1st, That though there were oppressions, rapines, and usurpations upon the people after the Norman victory, which is always the consequence of a victory, yet it was not a victory *in populum*, but *in regem* ; for neither the laws nor lands of the people were taken from them. 2d, That if there had been a colour of a conquest upon the people, yet by this great capitulation at Berkhamstead, the pretence of such claims was wholly laid aside, and the ancient laws restored. 3d, That after that restitution of their laws, which seems to be in the beginning of King William’s reign, about the fourth year, there were some interruptions upon the exercise of these laws, yet they were, after the fifteenth year, restored *in integrum*, as appears by Ingulphus the abbot of Crowland.

“ And in this point I have been the more prolix, for these two reasons : 1st, To evidence that the original of our English government is not by conquest *in populum*, nor the extent of the government to be measured by the right acquirable by such conquest ; but to make it appear that King William both claimed and obtained the crown upon a pretence of investiture, and upon a right only of *victoria in regem* ; and therefore was in the nature of a successor to King Edward, and by his conquest gained no larger a right than that King whom he succeeded had. And, 2dly, To silence that

untrue calumny objected against our government, laws, and liberties, as if they were barely of a Norman extraction, or the product of a Norman yoke, as some inconsiderate persons have been bold to say, by showing that they were our ancient government, laws, and rights.”<sup>1</sup>

From the reign of William I. until that of King John the same course was pursued. Parliaments were assembled yearly, with few exceptions, as during the civil wars in Stephen’s reign. They were composed as in former times. In 1094 a Parliament was held at Rockingham, wherein Eadmer, who was present, enumerates archbishops, bishops, abbots, great men, clergy, and a multitude of laymen<sup>2</sup>: that of 1101, he says, was composed “of the whole nobility of the kingdom, and a great many of the people.”<sup>3</sup> Henry I., in his letter to Pope Pascal II., regarding investitures, says, “that if he were to yield his rights, neither his optimates nor the people of England would permit it.”<sup>4</sup> In the Parliament of 1197 there are noticed as present, archbishops, bishops, abbots, earls and knights of the whole kingdom consenting to the laws of the forests.<sup>5</sup>

And here I may remark in general, that the histories of these times seldom enumerate all classes in Parliament, but, for brevity’s sake, place a part for the whole; as is evident from numberless

<sup>1</sup> Sir M. Hale’s *De Prerogativa Regis*, p. 14. and 15. MS. Brit. Mus.

<sup>2</sup> *Id.* p. 26.

<sup>3</sup> *Id.* p. 59.

<sup>4</sup> Brompton.

<sup>5</sup> Hoveden, f. 440.

instances, wherein the same writer, speaking of the same Parliament, mentions this or that rank of members according as he descends more or less into details.

In those Parliaments the laws were enacted and the subsidies granted, excepting those fixed by law and usage; the great affairs of state discussed and determined in peace and war. And upon the accession of Henry I. began that practice, renewed at the commencement of each succeeding reign, of confirming the ancient Saxon Constitutions and public liberties, which, in after-times, was done at the opening of every new Parliament, as the Rolls of Parliament prove.<sup>1</sup>

3. The enactment of the Great Charter, in the year 1215, has made the reign of King John an era in history; yet this celebrated statute contains little if any thing beyond a confirmation and new securities of ancient and established rights and the usages of the land. Thus, its clauses relating to Parliament, namely, that no tax should be imposed except by the common council of the kingdom; that the cities, boroughs, vills, and ports shall enjoy their franchises and customs; that the greater barons shall be summoned by special letters; and by general letters, addressed to sheriffs and bailiffs, all others who held in capite of the king, are mere declarations of the existing law. This is most evident from history and records. Fitzstephens,

<sup>1</sup> Rot. Parl. passim.

in his Life of Archbishop Becket, says, that when summoned as a delinquent by Henry II. to the parliament of Northampton, in 1164, he did not summon him "*ut antiqui moris erat*," by particular letter addressed to himself, but commanded the sheriff of Kent to cite him.<sup>1</sup>

In the year 1204, a special writ of summons was addressed to the Bishop of Salisbury extant upon record.<sup>2</sup>

In the year 1213, letters of summons are addressed to the earl marshal, and severally to all the earls, barons, and magnates of England. Of the same date are letters to the mayor and barons of London, to the mayor and honest men of Winchester, and to eleven other cities, and the consimilia adds, "*eodem modo scribitur omnibus burgis et dominicis domini regis*."<sup>3</sup>

To the Parliament held this year four knights were summoned from every county, by general letters addressed to the sheriffs. That to the sheriff of Oxfordshire is upon record on the clause rolls, with the consimilia below.<sup>4</sup>

Again, in the year 38 Henry III., we find writs of summons addressed to "archbishops, bishops, abbots, priors, earls, barons, knights, freemen, citizens, and burgesses of our land of Ireland,"<sup>5</sup>

<sup>1</sup> Hody's Hist. of Conv. p. 267.

<sup>2</sup> Selden's Tit. of Hon. p. 708.

<sup>3</sup> Pat. Rolls, 15 John and Petyt's Rights of the Commons, p. 155.

<sup>4</sup> Selden's Tit. of Hon. p. 170.

<sup>5</sup> Pat. Rolls, 3. M. 4. Hibernia.

with orders to the Chief Justice to summon a Parliament.

I have noticed these facts, to expose the falsehood of those modern writers, who, from servility or ignorance, date the representative system in counties and in towns from the 49th year of Henry III., for no better reason than because the writs to sheriffs of that date were the earliest they knew of. Logicians have ingeniously drawn an argument from the adversary's ignorance; but these writers have the confidence to draw an argument from their own.

4. In modern times an opinion has become prevalent, that, at the period of the Great Charter of Runimede, none were present in Parliament from counties but the King's immediate freeholders; or the "tenentes in capite de rege;" and, consequently, that they alone possessed the elective franchise, to the exclusion of all besides. This false notion proceeds from inattention to the true meaning of terms; to the actual condition of England; and to express testimony of records, with the rights therein contained.

1st, Sir Henry Spelman<sup>1</sup> shows that by minor barons were anciently meant no more than simply landholders of villages or manors, of whomsoever their lands were held; that all freeholders, as well those who held in soccage as those by military tenure, had the title of barons; only in ancient

<sup>1</sup> Glos. p. 69. and 70.

times the freeholders were not so numerous, nor of so small estate as now, and that "barones comitatus" signified all freeholders of the county.

Camden<sup>1</sup> assures us, that under the name of *Baronagium Angliæ* all orders of the kingdom are included. In the ancient records of cities and boroughs, "baron" signifies simply "freeman:" thus, in the customal of Sandwich, a baron of Sandwich means a freeman of Sandwich<sup>2</sup>; in like manner, a baron of London meant a freeman of London<sup>3</sup>; and so of many other towns. It is therefore evident, that by barons and freeholders were not meant those exclusively who held their lands immediately of the crown.

2d, This error proceeds also from inattention to the actual condition of England in those ages.

In the reign of William I. the thirty-seven shires into which England was then divided, upon the authority of an ancient manuscript cited by Selden, are said to have contained 60,215 knights' fees, of which 28,015 were held by the clergy. In numbers, ancient manuscripts are rarely exact, and probably there may be some error in the total here; but the proportion allotted to the clergy appears to be near to the truth; for in the reign of Richard II. the House of Commons estimate the lands of the church at one third of the whole lands of the kingdom.

Again, the greater barons were invested in great lordships, which sometimes extended over entire

<sup>1</sup> Brit. fol. 61.

<sup>2</sup> Customal of Sandwich.

<sup>3</sup> Madox *Firma Burgi*, p. 115.

counties, as the earldom of Chester. These lordships were subdivided into baronies and knights' fees, and the proprietors of those lands were called barons, knights, and freeholders of such a lord.<sup>1</sup> As the King wrote in his writs "*baronibus suis*," so the greater lords did "*baronibus suis Francis et Anglis*."

They are styled so in many ancient statutes; as in the statute of Merton<sup>2</sup>, where the preamble says, "Because many great men of England have infested knights and their freeholders of small tenements in their great manors;" in the statute de Cohæredibus of the same year, and by the statute of Marlborough<sup>3</sup>, it is enacted, "That none henceforth may distrain his freeholders to answer for their freeholders, without the King's writ." And this is confirmed by the statute 15 Richard II. and 16 Richard II.<sup>4</sup>, "that no subject be obliged to appear before the council of any seigneur or lady, to answer for his frank tenement, otherwise than by the law of the land."

In other records<sup>5</sup> these barons, knights, and freeholders are styled "*tenentes in capite*" of such a lord; as, for example, in the 20th Richard II. the Archbishop of Canterbury petitions Parliament<sup>6</sup> —

<sup>1</sup> Sir Robert Cotton, Tr. on Jurisd. MS. Brit. Mus. Harg. Coll. No. 255. p. 62.

<sup>2</sup> 20 Hen. 3. § 4. 1235. See st. *Modus faciendi homagium*. 17 Edw. 2. 1324.

<sup>3</sup> 52 Hen. 3. 1297.

<sup>4</sup> 15 Ric. 2. § 9, and 22. 1391 and 1392. Rot. Parl.

<sup>5</sup> See st. *Prerogative Regis*, 17 Ed. 2. 1334.

<sup>6</sup> Rot. Parl. 20 Ric. 2. § 27. 1397.



“that from the grant of your progenitors, the Archbishops of Canterbury for the time being have custody of all lordships, manors, lands, tenements, &c., “qui de eâdem ecclesiâ tenentur in capite, durante minore ætate hæredum tenentium suorum, licet iidem tenentes alibi teneant de dom. rege in capite.” Holding in capite of subjects are terms in statutes<sup>1</sup> of common use.

In fine, if to those who held their lands of the clergy be added those who held of the great lords, there were not probably one tenth of the knights and freeholders of England who, in the reign of King John were infested immediately or *in capite* of the crown. Now, had none except the latter been in person or by representation in Parliament, one unavoidable consequence would have followed, — that no general subsidy or tax could have been imposed or levied upon the kingdom; and government would have become impracticable.

This will appear evident from the following records: —

First, from that clause of the Magna Charta itself, prohibiting over-lords to levy any aid from their freemen, unless in the three cases specially excepted:<sup>2</sup> — “Rex non concedat alicui baroni quod capiat auxilium de liberis hominibus suis, nisi ad corpus suum redimendum, et ad faciendum primogenitum suum filium militem, et ad primo-

<sup>1</sup> See st. 2 Hen. 4. § 77. Rot. Parl.

<sup>2</sup> Statutes of the Realm, p. 10.

genitam filiam semel maritandum, et hoc faciat per rationale auxilium." And even these exceptions were fixed by a statute of Edward I.'s reign at certain sums.<sup>1</sup>

"That no one shall do more service for his knight's fee than is thence due."<sup>2</sup> Again, "That no one be distrained to do more service for his knight's fee, or other free tenement, than is thence due."

"These securities were confirmed in the charters of Henry III., enacted in the years 1216, 1236, and 1251; and in those of Edward I., in 1297; and, lastly, in that enacted in the year 1300."<sup>3</sup>

Should any one imagine that those were securities not from Parliamentary subsidies; but from private exactions, let him consider the final clauses of those same charters. The charter of Henry III., in 1224, says:—"But for this concession and grant of these liberties and others contained in our charter of the forest, the archbishops, bishops, abbots, priors, earls, barons, knights, freeholders, and all of our kingdom,"<sup>4</sup> have granted us a fifteenth of their moveables. The same enumerations in the subsequent charters.

In the year 1236, the Parliament having granted a subsidy, the writ issued for collecting it mentions that it was granted "by archbishops, bishops,

<sup>1</sup> 3 Ed. 1. c. 36. 1275. Statutes of the Realm.

<sup>2</sup> Statutes of the Realm, p. 10.

<sup>3</sup> Statutes of the Realm.

<sup>4</sup> Ibid.

<sup>5</sup> Claus. Rolls, 21 Hen. 3. M. 7 d.

abbots, priors, earls, barons, knights, and freemen, for themselves and their bond-tenants." The records furnish numberless instances of the same.

Again, the Great Charter of confirmation declares : — " And we have granted for us and our heirs, to archbishops, bishops, abbots, priors, and other persons of the church, and to counts and barons, *and to all the commonalty of the land*, that for no need will we take aids from our kingdom, except by common consent of the whole realm, and common profit of the realm, excepting the ancient aids accustomed."

Lastly, the statute de tallagio non concedendo closes this long series of chartered rights, wherein it is enacted : — " That no tallage or aid shall be taken or levied by us or our heirs in this realm, without the good will and assent of archbishops, bishops, earls, barons, knights, *burgesses, and other freemen of the land.*"

This renowned statute, declaratory of the immemorial rights of your ancestors, is still a law unrepealed. They bore it as the motto on the shield of the Constitution ; but now it is the epitaph on its tomb.

In the Introductory Chapter, it has been already proved, that according to the Constitution, as is evidenced by infinite records<sup>2</sup>, no one class of freemen could by right, nor did in fact pretend to impose

<sup>1</sup> 25 Ed. 1. In 1297. Statutes of the Realm.

<sup>2</sup> Prynne's Reg. of Parliamentary Writs, p. 233. ; and Petyt's Rights of the Commons, pp. 45. and 46.

taxes upon those classes to which themselves did not belong; nor had the Parliament, in ordinary times, the power to grant subsidies exceeding the customary, unless the consent of their constituents had first been asked and obtained; and so strictly practised was this great principle, that no one could be legally taxed without his consent, that Mr. Madox informs and proves from many records, “that in the reign of King John it became a general opinion among men, that if they consented to grants of money in Parliament they were answerable; if they did not, they were not answerable for the protection or payment charged on them.” And he gives many examples of suits brought by individuals in courts of law to be discharged from payment, because they had not been present in Parliament, either personally or by representation; and the courts of law discharged those suitors from the tax imposed.<sup>1</sup>

Such being the right and practice, who with common sense would believe, that nine tenths of the knights and freeholders of England would have submitted to have subsidies imposed and levied without their assent, against their wills, and in violation of the express words of statute law enacted to enforce the known rights and ancient Constitution of the land?

Thus it appears how true is that conclusion of Mr. Petyt, “That the tenants in capite did not

<sup>1</sup> Madox, *Baronia Anglica*, book i. c. 6. p. 116—120.

make up the entire Parliament, nor had they the power to bind or oblige others to make or alter laws without their assent.”<sup>1</sup>

“No more could or did any great lord of the fee, either ‘*jure tenuræ*’ or ‘*representationis*,’ charge or give the estate of his free-tenants who were independent, ‘*in omnibus serviciis suis debitis solum modo exceptis*.’ This point being not well observed and understood by late authors, has caused the mistake about tenants in capite representing the commons in Parliament.”<sup>2</sup>

And here I may remark, that of all the keepers of records, Mr. Selden, Mr. Prynne, and Mr. Petyt alone had acquired an intimate acquaintance with their contents, and have best applied them to illustrate the Constitution, as their various and profound works abundantly prove.

Having thus shown that the elective right in counties neither did nor could depend upon holding in chief of the crown, the reader will not, I trust, think his time mispent if this important point be further illustrated from other parts of the Constitution.

It is most certain that the bishops were members of the Saxon Parliaments, where they sat and voted by ancient custom and not by tenure. But in after-times it is plain that they were there in a twofold capacity. As tenants in chief holding their temporalities “*sicut baroniam*,” they were by right mem-

<sup>1</sup> Rights of the Commons, p. 49.

<sup>2</sup> Id. p. 147.

bers of the Curia regis, or King's great court and council of barons, which formed a part of Parliament, as Sir Matthew Hale expresses it, "consilium in consilio." This right they possessed by virtue of the Constitutions of Clarendon.<sup>1</sup>

But it is also clear that they preserved their ancient right of sitting and voting in Parliament as bishops<sup>2</sup>; for in the vacancy of any bishoprick the custos spiritualium, or guardian of its temporalities, was summoned in his stead; and in the absence of any bishop out of the realm, his vicar general received a summons to represent him in Parliament, and of such writs some are still extant. This Mr. Selden considers, and justly, as a relic of the Saxon times; and Sir Matthew Hale observes, that bishops were summoned to Parliament from ancient custom rather than from barony, because there were several whose temporalities had never been erected into baronies.

Neither were the parochial or diocesan clergy summoned, or ever were assembled together with Parliament as tenants in chief, but simply as clergy.<sup>3</sup> They were summoned by the King's writ directed to the particular bishops, requiring him to appear in Parliament himself<sup>4</sup>; so likewise to warn by the clause *præmunientes* the dean of his cathedral church and his archdeacons to appear there in per-

<sup>1</sup> 10 Hen. 2. 1164. Hody's Hist. of Conv. pp. 126. 129.

<sup>2</sup> See also the Rolls of Parl. 21 Rich. 2.

<sup>3</sup> See Rolls of Parl. 15 Ed. 3. and 4 Rich. 2.

<sup>4</sup> Hody's Hist. of Conv. pp. 12, 13.

son, the chapter to be represented by one, and the diocesan clergy by two proctors. Such were the later forms, what difference there might be in the earlier is unknown. This much is certain, that when the parochial clergy were not summoned to Parliament, neither could they be taxed.

Thus, in the year 1207, King John demanded of the bishops and abbots assembled in Parliament a subsidy out of the benefices of the parochial clergy, which they refused as a thing unheard of, "*quod ab omnibus seculis prius fuit inauditum.*"<sup>1</sup>

In the following session the King repeated his demand with no better success, and the rolls prove that it ended in the Parliament granting a subsidy for themselves, and writs being issued to summon the parochial clergy to desire an aid from them.

Again, in the year 1254<sup>2</sup>, writs were sent to all the bishops, requiring them to convene all the clergy of their respective dioceses to consider of a subsidy, and having resolved what to give, the clergy of each diocese were directed to send up their proxies to Parliament, there to grant, as had been directed by their principals.

I have noticed these early instances as affording another proof how rigidly that great and fundamental principle of the Constitution was observed,

<sup>1</sup> Pat. Rolls, 8 John. Prynn's Parl. Writs. Hody's Hist. of Conv. pp. 269, 270. 425.

<sup>2</sup> Close Rolls, 38 Hen. 3. M. 7 d. Prynn's Parl. Writs. Hody's Hist. of Conv. pp. 339, 340.

that no class of freemen could be taxed without their consent.

During the reigns of Edward I. and of Edward II. we find few Parliaments in which the parochial clergy were not present<sup>1</sup>; and from the 28th of Edward III., 1353, they were constantly summoned and generally present in Parliaments, or else in convocation sitting at the same time, until the reign of Henry VI.

In like manner the cities and boroughs were summoned to Parliament, and returned their members in all times, without any reference whatsoever to their tenure, or whether they held of the crown or of subjects; as shall be with certainty proved when we come to treat of the Representation of Towns.

2dly, Hitherto of the Constitution in general, and in particular of the Representation of counties before the reign of Edward I.

Let us now follow the subject downwards, until the reign of Henry VI. Not that in Edward's reign the Constitution underwent any change, for the same system was upheld that had stood for ages the immemorial customs of their ancestors. For, as Mr. Petyt observes<sup>2</sup>, "No law writer, neither Bracton, Britton, Fleta, nor Hengham, no chronicle, nor historian, nor charter, ever did remark or hint at any such alteration, or any alteration at all in the representation in Henry III.'s time.

<sup>1</sup> Hody's Hist. of Conv. pp. 391. 425.

<sup>2</sup> Petyt's Rights of the Commons, p. 59.



But as from that period the writs, rolls, and statutes of Parliament have been preserved with more care than before, so our information becomes more ample and exact. From these the following are submitted to the reader's consideration : —

1st, The writs for county elections in the reigns of Edward I. and his successors, direct "the honest men of the counties" (*probi homines*), "the free-men," "the other persons of the laity," "the men of the counties," "the community of the counties," to choose some one to represent them.<sup>1</sup> In the writs for elections in Edward II.'s reign, although the greater part are lost, these terms are found twenty-one times repeated.

It is worthy of remark that these are the same terms used in the writs to cities and boroughs where the elections were made by the inhabitants, as shall hereafter be shown.

Communities of counties is an expression of constant occurrence, explained by Mr. Madox thus: "In former times, even the general districts or divisions of the kingdom of England were dealt with as communities. A county, hundred, a frank-pledge, &c. were wont to be fined in *communi*, and to be taxed in *communi*, and to be put in charge to the King in his revenue rolls by the general name of such a *comitatus* or hundred."<sup>2</sup>

"The men or commons of a county, when spoken of collectively, have been frequently styled

<sup>1</sup> Calendar of Writs.

<sup>2</sup> Firma Burgi, p. 86.

*communitas*, a community. Knights of the shires attending Parliament were wont to be chosen by the community of each county, and their wages were leviable upon the said community.”<sup>1</sup>

In the same sense these terms are used in the rolls of Parliament. — Thus in the 51st year of Edward III. the House of Commons resolved “that of the common right of the kingdom, two persons are and will be chosen for the communities of the said counties, except the prelates, dukes, earls, and barons, and such as hold by barony, and besides cities and boroughs who ought to choose of themselves such as should answer for them.”<sup>2</sup>

Again the writs issued for collecting from counties the subsidies granted in Parliament assures us, that these grants were made by the earls, barons, knights, and other persons of the laity, besides cities and boroughs<sup>3</sup>; or, “by the dukes earls, barons, knights, lords of villages, freemen, and all the said counties as well within liberties as without, and also the mayors, bailiffs, and commonalty of the cities and boroughs of the same counties.”<sup>4</sup>

The writs for levying the wages of knights of the shires direct them to be raised from the “communities of the counties<sup>5</sup>,” and in this they followed the ancient common law, as is evident from many

<sup>1</sup> Firma Burgi, p.

<sup>2</sup> 51 Ed. 3. Plac. Parl. p. 368.

<sup>3</sup> 25 Ed. 1. Pat. Rolls.

<sup>4</sup> 13 Hen. 4. M. 7. Pat. Rolls. Rolls of Parl. App. 10.

<sup>5</sup> Clause Rolls of 49 Hen. 3. Prynn's Reg. § 4. p. 3.

Parliamentary rolls. But to this rule there were exceptions, certain lands being exempted by custom, though why they were so, and who could claim exemption, is explained by no record that I have seen. Hence proceeds the difficulty of fixing the correspondence between the elective right and the obligation to defray the knights' expenses, yet that such a relation did certainly exist before the reign of Henry VI.

It is certain that in general the wages were assessed and levied upon the inhabitants of the counties at large, excepting the Lords spiritual and temporal, the clergy, and the towns sending members for themselves.

Thus, by a private act of Parliament in the 9th of Henry V., the inhabitants of the Isle of Ely were discharged from contributing towards the expenses of the knights for the county, as they had vested a certain sum in land set apart for the same purpose.

The act says<sup>1</sup>, "All inhabitants of the Isle of Ely, as well for the time past as to come, their heirs and successors, and all others who shall be inhabitants of the said Isle, for their lands and tenements, their goods and chattels in the said Isle, shall be discharged for ever from the wages and expenses of the said knights."

Again the statute of 23 Henry VI. c. 10. states<sup>2</sup>, "that as the sheriffs had illegally levied as wages

<sup>1</sup> 9 Hen. 5. Rolls of Parl.

<sup>2</sup> In 1444. Statutes of the Realm.

more than was due," this was enacted to protect the common people of the counties. "And that henceforth the sheriffs, coroners and bailiffs of every hundred and wapentake shall be present in the county court, assembled by proclamation, and shall there assess, in presence of the suitors of the said counties and all others that will to be at the assessment of the wages of the knights, every hundred to pay a certain sum of wages, and every village within the said county that is assessable." This statute remains unrepealed, though long disused.

In later times that celebrated law of Henry VIII.<sup>1</sup> which incorporated Wales with England, and determined its mode of representation in the English Parliaments, enacts, that the wages of the knights shall be levied and paid as in the other shires of England, that is, from the commons of the shires they are elected in. And the statute which confirms, enlarges, and explains this wise law, and which expressly says that it is an extension of the ancient customs of England to Wales, proves that there had existed a relation between the elective franchise and the obligation to defray the expenses of members.

For the first statute had enacted, "that the wages of burgesses shall be gathered as well of those boroughs they are burgesses of, as of all other ancient boroughs within the same shire."

<sup>1</sup> 27 Hen. 8. c. 26. Statutes of the Realm.

But this declares<sup>1</sup>, “that forasmuch as cities and boroughs not sending members must contribute to the wages of the citizens and burgesses, therefore, henceforth they shall have right to be summoned to the election of the shire towns and vote with them.”

These statutes are here cited in proof of the ancient custom of levying wages which was maintained long after the disfranchising act of 8 Henry VI.

Lastly, the frequent attempts of the lords to relieve their lands from the payment of knights’ wages and to throw this burden upon the rest of the county occasioned many petitions from the House of Commons. The two following embrace the substance of all.

“ The House of Commons pray, that as the wages of knights coming to parliament for counties are to be levied from knights’ fees in counties, as well within franchises as without, and that now certain fees that are fallen into the hands of the tenants of lords of franchises, which lords come to Parliament by summons, pay nothing towards the said expenses, to the great oppression of the people; — that it may be ordained, *that as the said knights are in each Parliament for the commons of the counties, and the lords of the said franchises solely for themselves*, that the said wages be henceforth levied from all the fees of knights aforesaid, as well within franchise as without, to the end that each

<sup>1</sup> St. 35 Hen. 8. c. 11. Statutes of the Realm.

tenant of a knight's fee may show his proportion of the said wages, according to the days that the said knights shall serve in Parliament for the future."<sup>1</sup> The answer of the King refers the commons to the existing law for remedy, which had been specially provided by the statute 12 Richard II. c. 12.<sup>2</sup>

The second petition is as follows: "The House of Commons pray<sup>3</sup>, that as the wages of knights who come to Parliament for each county of England ought to be levied, as well from within franchises as without, and now divers lords, by colour of their liberties and franchises in different counties, are unwilling to allow the proportions duly assessed as appertains to their possessions to be levied by their own officers, nor will suffer the sheriffs of counties, or their officers, to enter the said franchises to levy the said wages, notwithstanding the writs of the King to the said sheriffs, directing them to levy the said wages, for which many sheriffs, from time to time, are sued upon their account with the exchequer by the said knights, and charged to make good the wages from their own proper estates; and sometimes the wages are levied entirely from the people dwelling without the said franchises, to their great damage as for that of the sheriffs: therefore, may it please our Sovereign the King to grant powers to the said sheriffs, that henceforth

<sup>1</sup> Rolls of Parl. 15 Rich. 2. § 37.

<sup>2</sup> Statutes of the Realm, 1388.

<sup>3</sup> Rolls of Parl. 3 Hen. 5. § 25.

they may levy the said knights' wages from each entire county within the realm, as well within franchise as without, except the demesne lands in the proper possession of those Lords spiritual and temporal, and as well within franchise as without, who come to Parliament by authority of writs of the King, and excepting the cities and boroughs, whence citizens and burgesses come to Parliament by summonses from our Sovereign the King.

"Considering that the said knights in each county are elected, and come as well for the said franchises as for the rest of the said counties throughout the realm of England," the answer was, — "Let the statute of 12 Rich. II. be kept and enforced in all points," as affording sufficient remedy.

Thus much regarding the wages of knights of the shire.

Before we proceed to consider the statutes regulating county elections, the reader will not be displeased to see of whom were composed the county courts of Durham and Chester. In the 34th year of Henry VIII.'s reign a statute was made empowering the county and city of Chester to send representatives to the Parliament of England, the elections to be made as in other counties and cities of the kingdom. And in the 25th year of Charles II.'s reign, the same was granted to the county and city of Durham.

Before the statutes these counties palatine had

been accustomed to vote their own subsidies in miniature Parliaments of their own.

Thus in the 11th Edward I.<sup>1</sup>, a writ was issued for summoning an assembly of the bishoprick of Durham where the King sent special commissioners desiring a subsidy. The writ is addressed "To the Bishop of Durham, to the abbots, priors, deans, and chapters, within the said bishoprick; and to the knights, freemen, and communities of boroughs and towns of the bishoprick." The writ was issued and the assembly held according to the rights and customs of the county.

In like manner the county palatine of Chester had a Parliament of its own, formed of its county court, to all appearances as the other county courts of England.

Of its members and its powers Mr. Petyt's observations are worthy to be remembered. He says, "And so just and excellent was the balance of the constitution of our legal government<sup>2</sup>, in preventing any order or rank of subjects to impose upon or bind the rest without their common consent; and in conserving, as it were, an universal liberty and property to every individual degree of men from being taken from them without their assent, that the county palatine of Chester ab antiquo were not subject to such laws to which they did not consent; for, as well before the conquest of England as after,

<sup>1</sup> Hody's *Hist. of Convocations*, p. 382.

<sup>2</sup> Petyt's *Rights of the Commons*, pp. 45, 46.



they had their commune concilium or court of Parliament, by authority of which the "barones<sup>1</sup>, milites et quam plures alii," "the barones<sup>2</sup>, liberi homines, et omnes alii fideles," or, as the application to Henry VI. saith, "The abbots, priors, clergy, barons, knights, esquires, and commonalty did, with the consent of the earl, make or admit laws within the same, such as should be thought expedient and behoveful for the weal of the inheritors and inheritance of the said county; and no inheritors or possessors within the said county were chargeable or liable, or were bounden, charged, or hurt of their bodies, liberties, franchises, lands, goods, or possessions, unless the said county or Parliament had agreed unto it. And I dare, under submission, affirm, that neither this county palatine nor Durham were ever subjugated to have their estates taken away at the good will or pleasure of the earl or bishop, under any notion or fancy in those days of being their representatives or commune concilium regni, or that, being dependent tenants, their assents were included in their lords' assent. And if the commune concilium Cestrense, or Parliament of Chester, was deduced from records, it would be of greater use to show as a mirror the government of England in ancient days, than what I have yet seen published by any author."

The statutes regulating county elections form

<sup>1</sup> Rot. 44 Hen. 3. M. 1 d.

<sup>2</sup> Pat. Rolls, 3 Ed. 1. M. 6.

the last class of documents, — necessary to be known.

From the reign of Edward I. until that of Henry VI. elections for shires had been made according to ancient customs of England; a few statutes there were, but they were either simply declaratory, or in the main enacted to enforce the common law, and protect it against abuse. Thus the first statute declares that all elections shall be free, in these words, "The King commandeth upon great forfeiture, that no great man, or other by force of arms, or by malice, or menaces, shall disturb any to make election."<sup>1</sup> And let it be well observed, that this statute remains in full and entire force as law, and has been oftentimes renewed by subsequent statutes; the second<sup>2</sup>, "that no man of the law pursuing business in his Majesty's courts, nor any sheriff while sheriff, shall be returned as knight of the shire, and no such man of the law or sheriff then returned shall have wages, but knights and sergeants of the most worthy of the county shall be returned knights in Parliament, and elected in full county."

We have already seen that one of the chief charges against Richard II., and for which he was deposed by Parliament, was his violation of the freedom of elections. In the following reign of Henry IV., complaints of illegal practices became frequent. In the 7th year of this reign the House

<sup>1</sup> Stat. of Westm. 3 Edw. 1. c. 5. In 1275.

<sup>2</sup> 46 Edw. 3. In 1372.

of Commons brought in a bill to prevent false returns by ordaining<sup>1</sup>, " That proclamation be made in all the market towns (' villas marches ') of the counties, of the day and place where the said knights shall be elected fifteen days before the day of election, to the end that sufficient persons inhabiting in the said county may be there, to make election in due manner. And that the sheriff then there, and for the time to come, may be sworn to hold and execute it without fraud or affection to any."

This bill having been lost in the House of Lords, the Commons drew up another more specific and fitter to correct the abuse. Upon this the following statute was enacted<sup>2</sup>, " Our sovereign Lord the King, at the grievous complaint of the Commons in this present Parliament of the undue election of the knights of counties for the Parliament, which he sometimes made of affection of sheriffs, and otherwise against the form of the writs directed to the sheriffs, to the great slander of the counties, and hinderance of the business of the commonalty of the said county. Our sovereign Lord the King willing therein to provide remedy, by the assent of the Lords spiritual and temporal, and the Commons, in this present Parliament assembled, hath ordained and established, that from henceforth the election of such knights shall be made in the form that followeth ;

<sup>1</sup> Rolls of Parliament, 7 Hen. 4. No. 23. in 1406.

<sup>2</sup> 7 Hen. 4. c. 15. In 1405. Statutes of the Realm.

that is to say, at the next county to be holden after the delivery of the writ of the Parliament, proclamation shall be made in the full county of the day and place of the Parliament, and that all they that be there present, as well suitors duly summoned for the said cause as other, shall attend to the election of the knights for the Parliament, and then in the full county they shall proceed to the election freely and indifferently, notwithstanding any request or commandment to the contrary."

This statute is explained and enforced by penalties, 11 Henry IV.<sup>1</sup> where it is stated to have been declaratory of the ancient law.

The clause in the former statute, "all they that be there present, as well suitors duly summoned for the said cause as other, shall attend to the election of the knights of Parliament," is more clearly expressed in the rolls of Parliament<sup>2</sup>, which is the original record: "And all those who are there present, as well sueters duly summoned, for this cause, as others attending the election of their knights for the Parliament."

The next statute is the 1st of Henry V.<sup>3</sup>, like the earlier made in affirmance of the ancient law, and enacting "that the statutes of the elections of the knights of the shires to come to the Parliament be holden and kept in all points; adjoining to the same that the knights of the shires, which

<sup>1</sup> 11 Hen. 4. c. 1. In 1409.

<sup>2</sup> Rolls of Parl. 7 Hen. 4. § 139.

<sup>3</sup> 1 Hen. 5. c. 1. In 1413.

from henceforth shall be chosen in every shire, be not chosen unless they be resident within the shire where they shall be chosen, the day of the date of the writ of summons to Parliament, and that the knights and esquires, and others which shall be choosers of these knights of the shires, be also resident within the said shires in manner and form as aforesaid."

This statute is confirmed by subsequent, and that part which enforced residence remained the law of the land until repealed by the 14th of George III. c. 58.

Here, likewise, there is a difference between the words of the statute and those of the roll of Parliament. The former says, "that the knights and esquires, and others which shall be choosers of those knights of the shires, be also resident within the said shires." But the roll of Parliament enacts<sup>1</sup>: "And that the said knights be elected by *knights, esquires, and commons of the counties* where they are elected, and in no other manner."

Of these differences between the roll of Parliament and the statute roll, an explanation is due to the reader.

By the law and usage of Parliament, statutes were generally commenced in the House of Commons, in the form of petitions, thence transmitted to the Lords, and when they had received the King's

<sup>1</sup> Rolls of Parl. 1 Hen. 5. § 20. In 1413.

assent were engrossed by the clerk of Parliament in the rolls of Parliament. From them the statute roll was copied to facilitate publication, but as these copies were made after the prorogations or dissolutions of Parliament under the direction of the Chancellor and his officers, who in those ages were priests, many illegal things were done; for sometimes they changed words, or added others, sometimes whole sentences, so as to alter the meaning and object of laws; sometimes they omitted statutes and excluded them from publication, and occasionally forged pretended acts, unknown to, and without the sanction of, Parliament; of which instances will be found in a subsequent part.

Hitherto the statutes had been made to enforce the rights and ancient franchises of England, now assailed by powerful enemies. But in the year 1429, a daring encroachment was made upon the rights of election, by that statute which disfranchised all the county electors of England, of whatsoever condition, who were not possessed of forty shillings yearly in freehold land, a sum equal to about thirty pounds of our present money. The act itself sets forth the pretexts for its enactment; its real design we shall afterwards disclose.

Its words are: — “Whereas the elections of knights of the shires to come to the Parliaments of our Lord the King in many counties of the realm of England have now of late been made by very great (outrageous) and excessive number of people dwell-

ing within the same counties of the realm of England, of which most part was people of small substance, and of no value, whereof every one of them pretended a voice equivalent as to such elections to be made with the most worthy knights and esquires dwelling within the said counties, whereby manslaughter, riots, batteries, and divisions among gentlemen and other people of the same counties shall very likely arise and be, unless convenient and due remedy be provided in this behalf; our Lord the King, considering the premises, hath provided, ordained, and established, by authority of this present Parliament, that the knights of the shires to be chosen within the same realm of England to come to the Parliaments hereafter to be holden, shall be chosen, in every county of England, by people dwelling and resident in the same counties, whereof every one shall have free land or tenement to the value of forty shillings by the year, at least, above all charges.”<sup>1</sup> And the statute further enacts, “that every sheriff shall have power to examine upon oath, upon the Evangelists, every such chooser how much he may expend by the year. And if any sheriff return knights to come to Parliament contrary to the said ordonnance, the justices of assize, in their sessions, shall have power, by the authority aforesaid, thereof to enquire; and if by inquest the same be found before the justices, and the sheriff thereof be duly attainted, that then

<sup>1</sup> 8 Hen. 6. c. 7. In 1429.

the sheriff shall incur the pain of 100*l.* and also imprisonment for one year without being let to bail or mainprize; and the knights so returned shall lose their wages."

This statute was the first that broke in upon the ancient Constitution, by the exclusion of the people from that share in the government of their country, inherited from their forefathers, and, until this period, possessed in all ages whereof we have any knowledge, and through all mutations of time.

It has been continued by subsequent statutes nearly in the same words until now<sup>1</sup>, and forms the basis of the modern law regarding elections in counties.

The words of this law lead us to observe, 1st, That as in the former statutes, so in this, the statute contains several expressions not to be found in the rolls of Parliament; as, for example, the former asserts that the elections had been made by "a very great, outrageous, and excessive number of people;" whereas the expressions of the record itself are, "by too great and excessive number<sup>2</sup>," but not a word of their being "outrageous." But let us pass to matters more important.

2dly, If no other proof remained of the rights of the commonalty in the representation of counties, this statute would itself afford conclusive evidence; for its words are, "that the elections had been made by a very great and excessive number of

<sup>1</sup> Heywood on Elections, p. 23.

<sup>2</sup> Rolls of Parl. 8 Hen. 6. § 39.



people dwelling in the said counties, of whom the greater part were people of small substance and of no value ;” the original is, “ dont le greindre partie estoit per gentz si noun de petit avoir ou de null value.”

But the statute does not pretend that the elections made by them were illegal, nor could it ; for the latest statute was that of 1 Henry V., passed only sixteen years before itself, declaratory of the ancient right and custom<sup>1</sup> ; and by this it had been enacted, “ that the knights be elected by knights, esquires, and commons of the counties where they are elected, and in no other manner.” And these electors were to be assembled by proclamation ; and the preceding petition of the House of Commons, in consequence of which the act of 7th Henry IV.<sup>2</sup> was framed, requires that “ proclamation be made in all the market towns of the county, of the day and place where the said knights shall be elected, fifteen days before the day of election, to the end that sufficient persons inhabiting in the said county be there to make election in due manner.”

Neither does the statute pretend that riots or crimes had been committed, but that peradventure they might arise ; and upon this shallow pretence, the nation at large was to be robbed of its rights.

In fine, this statute of disfranchisement was

<sup>1</sup> In 1413.

<sup>2</sup> Rolls of Parl. 7 Hen. 4. No. 23. In 1406.

devised, not because former elections had been illegal, but to exclude the Commons from power, then bent upon reforming the scandalous abuses and exorbitances in religion and government, as now we proceed to prove beyond the possibility of doubt.

Here I must forewarn the reader, that what we are now to investigate are not the motives of this ancient statute only, which be it remembered is still the existing law, nor the passions and interests of ages long gone by, nor yet the mere notions of modern times, but to trace to its true source, and to follow downward, with the stream of time, those inroads made from age to age upon the rights and freedom of the land ; whereof the first and most fatal was this statute of disfranchisement ; the second, that device of creating miserable and dependent villages into boroughs, to outvote the Commons in their own House ; and, lastly, as by a necessary consequence, that trick of state called " Political Corporations," which by little and little, sometimes by stealth, sometimes by open robbery, supplanted the freemen in their franchises.

Such being the subject of our enquiry, and its importance, we may rest assured that this system proceeded from no sudden impulse nor passing opinions of that day, but that its causes had for ages been gathering, and had become deeply rooted in the feelings and interests of men ; for great and lasting changes in society come not upon the sudden, as all experience proves.

But to our subject. From the first settlement of the Romish clergy in England until the reign of William the Norman, a period of 460 years or thereby, their possessions had been constantly accumulating. At this latter period they were estimated at 28,115 knights' fees of the 60,215 which England contained.<sup>1</sup> In the year 1381, the 4 Richard II.<sup>2</sup>, the House of Commons stated the property of the churchmen at one third part of the kingdom, nor did the convocation deny the assertion. Neither estimate could be quite exact, nor either wide of the truth.

This great fact, established at times so distant, makes it probable that little had been gained or lost in the intervening time in which our enquiries begin.

This enormous wealth did very early draw the cupidity of the popes, who began as appears in King John's reign, to demand subsidies, sometimes from the clergy, sometimes from the laity too, now under one pretence as a croisade, then upon another.

Emboldened by success, and by the weakness of Henry III., their exactions grew more frequent and oppressive; for it has been ever the nature of these priests to prey upon the weak, and fawn upon the strong. During the minority of Henry III.<sup>3</sup> the

<sup>1</sup> Selden's Tit. of Hon. p. 692.

<sup>2</sup> Rolls of Parl. 4 Rich. 2.

<sup>3</sup> Hody's Hist. of Conv. p. 306.

Parliament prohibited these extortions; but afterwards the King and the Pope shared the booty, and between these two millstones the people were ground<sup>1</sup>; for whatever the clergy paid with one hand, with the other they gathered from the land. An example or two will show the character of these exactions.

In the year 1245<sup>2</sup>, upon a diligent enquiry made throughout every county of England, it was discovered that the rents from benefices held by Italians, non-residents, and bestowed by the Pope, amounted to 60,000 marks the year; which (it is said) was more than the revenue of the crown. Upon this, letters were addressed by Parliament to the council of the church then assembled at Lyons, and others by the King, the clergy, the Lords and Commons, to the Pope and conclave, remonstrating against these extortions<sup>3</sup>; but all without effect.

Again, in the year 1247<sup>4</sup>, two persons were sent by the court of Rome into England, to raise money. The clergy granted 11,000 marks; the King summoned Parliament in hopes to obtain a similar donation; and in the writs it is set forth among other motives for assembling, "to hear the good news of a benefit conferred upon England from heaven;" which was found to be, that some drops of Christ's blood had been sent to the King from Jerusalem, which with much devotion the

<sup>1</sup> Hody's Hist. of Conv. p. 333.

<sup>2</sup> Id. pp. 327, 328.

<sup>3</sup> Id. pp. 325, 326.

<sup>4</sup> Id. pp. 329, 330.

King himself, in a poor habit, carried on foot from St. Paul's to Westminster, and there deposited. But this had become by repetition a stale trick, so the Parliament refused the grant, and enacted laws to limit ecclesiastical jurisdiction as a curb on the insatiable avarice of the priests.

From these gross frauds sprung two public benefits; the one publicity, the other a conviction that reform must be effected by the people themselves. Accordingly, in the following reign, the Parliament began in earnest with the church. The statute of mortmain was enacted, which forbid the clergy "by any craft or engine to presume to appropriate to themselves any lands, that thereby may come into mortmain."<sup>1</sup> The statute of Westminster<sup>2</sup> prohibited them to sell or misapply the property of hospitals and alms-houses founded for the relief of the poor, by the King or by subjects, which in those times were usually placed under the care of churchmen.

Thus was the reform slowly advancing, when an extraordinary event occurred to hasten its progress.

In the year 1296, Pope Boniface VIII. issued a bull<sup>3</sup> forbidding "all churchmen, regular and secular, to pay any subsidies or taxes in any state of Christendom towards the expenses of those states wherein they had their possessions, except by his previous permission, upon the pain of 'anathema,' excom-

<sup>1</sup> St. 7 Edw. 1. 1279. Conf. by 18 Edw. 1. 1290.

<sup>2</sup> St. 13 Edw. 1. 1285. c. 33.

<sup>3</sup> Rymer's *Fœdera*, vol. i. p. 836.

munication, and interdict, against the clergy who should pay, and the laity who should impose, such subsidies for the future, not absolvable save by the Pope himself." Of all the usurpations of the priests of Rome, this was the boldest. Had it been submitted to, the nations of Europe must have sunk like the Jews of old, or like the modern Romans, under the yoke of a theocracy; Parliaments and freedom had seen their last, civil government been made impracticable, and arts, sciences, and civilisation been arrested in their course, as by sad experience we see they are, in every country where the priests of Rome have acquired the mastery.

It is certain that the Pope had secretly preconcerted this bold attempt with the chiefs of the clergy.<sup>1</sup> Accordingly, the convocation of 1296 was summoned by mandates of unusual forms, and to members of the church unused to attend, under pains of excommunication and interdict, for great but undefined dangers threatening the church.

The King in Parliament requested the ordinary subsidy contributed by the clergy, towards the defence and maintenance of the state<sup>2</sup>; it was formally denied him, in writing under seal, stating as their reason, obedience to the Pope's prohibition lately published.

But Edward, for whose ambition England was too

<sup>1</sup> Hody's *Hist. of Convocations*, part iii. p. 149. Rapin's *Hist.* vol. i. p. 378.

<sup>2</sup> Hody's *Hist.* part iii. p. 153.

King himself, in a poor habit, carried on foot from St. Paul's to Westminster, and there deposited. But this had become by repetition a stale trick, so the Parliament refused the grant, and enacted laws to limit ecclesiastical jurisdiction as a curb on the insatiable avarice of the priests.

From these gross frauds sprung two public benefits; the one publicity, the other a conviction that reform must be effected by the people themselves. Accordingly, in the following reign, the Parliament began in earnest with the church. The statute of mortmain was enacted, which forbid the clergy "by any craft or engine to presume to appropriate to themselves any lands, that thereby may come into mortmain."<sup>1</sup> The statute of Westminster<sup>2</sup> prohibited them to sell or misapply the property of hospitals and alms-houses founded for the relief of the poor, by the King or by subjects, which in those times were usually placed under the care of churchmen.

Thus was the reform slowly advancing, when an extraordinary event occurred to hasten its progress.

In the year 1296, Pope Boniface VIII. issued a bull<sup>3</sup> forbidding "all churchmen, regular and secular, to pay any subsidies or taxes in any state of Christendom towards the expenses of those states wherein they had their possessions, except by his previous permission, upon the pain of 'anathema,' excom-

<sup>1</sup> St. 7 Edw. 1. 1279. Conf. by 18 Edw. 1. 1290.

<sup>2</sup> St. 13 Edw. 1. 1285. c. 33.

<sup>3</sup> Rymer's *Fœdera*, vol. i. p. 836.

munication, and interdict, against the clergy who should pay, and the laity who should impose, such subsidies for the future, not absolvable save by the Pope himself." Of all the usurpations of the priests of Rome, this was the boldest. Had it been submitted to, the nations of Europe must have sunk like the Jews of old, or like the modern Romans, under the yoke of a theocracy; Parliaments and freedom had seen their last, civil government been made impracticable, and arts, sciences, and civilisation been arrested in their course, as by sad experience we see they are, in every country where the priests of Rome have acquired the mastery.

It is certain that the Pope had secretly preconcerted this bold attempt with the chiefs of the clergy.<sup>1</sup> Accordingly, the convocation of 1296 was summoned by mandates of unusual forms, and to members of the church unused to attend, under pains of excommunication and interdict, for great but undefined dangers threatening the church.

The King in Parliament requested the ordinary subsidy contributed by the clergy, towards the defence and maintenance of the state<sup>2</sup>; it was formally denied him, in writing under seal, stating as their reason, obedience to the Pope's prohibition lately published.

But Edward, for whose ambition England was too

<sup>1</sup> Hody's *Hist. of Convocations*, part iii. p. 149. Rapin's *Hist.* vol. i. p. 378.

<sup>2</sup> Hody's *Hist.* part iii. p. 153.



narrow, was not the man to share his power with priests. He submitted this affair to Parliament<sup>1</sup>, then sitting, and an ordinance was immediately made, empowering the King to issue orders to his sheriffs in every county to seize all lands, houses, and possessions, all goods, moveable and immoveable, whatsoever, the property of the clergy, and confiscate them to the public use, and inventory in writing their values and extent. These orders were every where obeyed; the priests shrunk under the iron hand of Edward, and were fain to yield and redeem their possessions by timely submission under the pains of outlawry and high treason. But not until they had become, as says a chronicle of that time<sup>2</sup>, the public contempt and the people's scoff. "*Et facti sunt clerici quasi opprobrium hominum et abjectio plebis.*"

This event sunk deep into the minds of men. The inventories had discovered the monstrous wealth of the Clergy; their bold attempt opened the eyes even of the multitude to their ambition, rapacity, and cunning; and Edward's measures pointed the way to greater reforms, and taught the means for their accomplishment.

In the last year of this reign a law was made against a gross abuse<sup>3</sup>, upon grievous complaints, against abbots, priors, and other religious men, who

<sup>1</sup> Hody's Hist. part iii. p. 153. Somner's Hist. of Canterbury, p. 146. Balleley's Hist. of Cant. p. 30. Appendix.

<sup>2</sup> Chronicle of Dunstable, Hody's Hist. part iii. p. 154.

<sup>3</sup> St. de Asportatis Religiosorum, 35 Ed. 1. c. 6. 1309.

imposed arbitrary, unusual, and unsupportable taxes and burdens upon the lands and tenements founded for the maintenance of religion and charity, and then remitted to their superiors the Chiefs of foreign monasteries, of whose order they were, the fruits of these exactions. This was forbid under pain of forfeiture.

During the following reign of Edward II., from 1307. to 1327, the distractions at home and disasters abroad appear to have diverted the attention of Parliament from the abuses of the church. But the spirit of reform had been active among the people; for no sooner was internal tranquillity restored, than the House of Commons began the task. It were tedious, and endless too, were we to follow from session to session, in times so distant from the era we treat of, their various bills, sometimes to abolish one abuse, sometimes another. A few examples will show their nature.

In the 4th and 5th years of Edward III.'s reign, confirmations were enacted of the law above mentioned against illegal impositions. In the 8th, the House of Commons passed a bill<sup>1</sup>, that remedy may be had against oppression of the clergy, for probates of wills, and citations for trifles. In the 17th Edward III. the House of Commons brought in a bill<sup>2</sup> to prevent ecclesiastical dignities and livings being conferred on foreigners by the Pope, whereby the treasure of the land was spent abroad,

<sup>1</sup> Rolls of Parl. 8 Edw. 3. No. 9.

<sup>2</sup> Id. 17 Edw. 3. No. 19.

the secrets of the state discovered, and its native clergy excluded. Among others, he had lately granted two new Cardinals sundry livings in England, and particularly to the cardinal of Perigort about 10,000 marks yearly; and the House adds, "that they neither can nor will endure it."

The King's answer was, that he desired the Lords and Commons to ordain remedy and amendment, and that he will pass the bill, and thinks that letters should be addressed to the Pope by the King, the Lords, and the Commons, to this effect. Hereupon the Lords and Commons drew up the celebrated statute of provision, which prohibited the importing, or using, or process upon any bull or other instrument from the court of Rome.<sup>1</sup>

This accomplished, the two Houses address a memorial to the Pope, wherein they state, "that they had founded cathedrals, abbeys, and churches in England, of all which such only were to have the care who were able and meet in their own mother-tongue of England, effectually to teach and inform the flock." This statute of provisions which was designed to protect the country from foreign pillage, was opposed by the bishops and the rest of the clergy, and they seemed resolved to protest against it, but the King peremptorily forbade such presumption; an example, of which all history is full, how far in the priests of Rome the love of country, and of kindred too, is lost in ambition for

<sup>1</sup> See also 18 Edw. 3. Rolls of Parl. No. 32—39.

their order. For it appears that the native clergy of all ranks had in very many instances been turned out of their livings, and foreigners placed in their stead.<sup>1</sup>

In the 20 Edward III. the House of Commons passed a bill<sup>2</sup> to expel the kingdom all foreign monks, and that the abbeyes and priories where they dwelt may be seized into the King's hands, to be applied to the benefit of the English clergy, and of education, and to the support of the church; and besides, to seize the benefices of foreign cardinals. And five years afterwards<sup>3</sup>, the Pope and clergy, disregarding the statutes enacted, and the repeated complaints of the Commons, a law was made to prohibit foreigners from holding benefices in England.

But as these and all other laws to reform the abuses in the church came to nothing, being left unexecuted, as is proved by the continued complaints of the House of Commons throughout this reign, the Parliament at length determined upon striking at the root of the evil. Accordingly, in 1371, the rolls of Parliament inform us<sup>4</sup>, "that it had been declared to the King in the late Parliament by all the Earls, Barons, and Commons of England, that the government of the kingdom had for a long time been managed by men of the church, whereby many mischiefs and damages had happened in times past, to the disherison of the

<sup>1</sup> Rolls of Parl. 25 Edw. 3. No. 46. 1350.

<sup>2</sup> Id. 20 Edw. 3. No. 19. and 20.

<sup>3</sup> Id. 25 Edw. 3. No. 111.

<sup>4</sup> Id. 45 Edw. 3. § 15.

crown and to the great prejudice of the kingdom, that it would therefore please the King that laymen of sufficient abilities, *and no others*, might for the future be made chancellor, treasurer, clerk of the privy seal, barons of exchequer, comptroller, or other great officers and governors of the kingdom; and that this matter might be so established that it should never be defeated or any thing done to the contrary in time to come, saving to the King the removal and choice of such officers, yet so that they should be laymen."

The King's answer was, "The King will do in this point what seemed best to him by the advice of his Council."

Thus was this important measure lost, although upon its adoption depended the reform of all abuses in the state, and the execution of all laws. But the King found it necessary to comply for a while with the desires of his people, and accordingly William of Wickham, Bishop of Winchester, shortly after resigned the seals, which were given to Sir Robert Thorp, a judge; and the Bishop of Exeter was removed from being lord treasurer and replaced by Lord Scroop of Bolton. But in a few years the priests were restored as before, that is, to almost an exclusive monopoly of the civil offices of state. For, not content with the great offices and administration of the government, as mentioned in the act above<sup>1</sup>, many of the judges in the courts

<sup>1</sup> Hody's Hist. of Conv. pp. 151, 152. Parl. Rolls, 4 Edw. 3.

of common law were clergymen, and all the clerks, of the King's courts, as well of the two benches as of the Exchequer and Chancery. And it was for this reason that all livings in the King's gift, not exceeding the value of 20 marks (afterwards raised to 20*l.*), were put into the hands of the Lord Chancellor to be disposed of to them for their encouragement, as his Majesty's servants, who were privileged from residence on their benefices.

In a manuscript in the Cotton Library <sup>1</sup> a list has been preserved of the priests who were officers of the King in the age we now treat of, and who dwelt within the diocese of London; whence the author infers how great the number must needs be, if all were reckoned that lived in other diocesses.

Of the offices filled by priests the clerkship of Parliament was one, and of the abuses thence proceeding the records of Parliament afford too many proofs; of which we shall presently see examples.

While the nation was struggling against the thralldom of the clergy, *they* were not idle.<sup>2</sup> They obtained from the King by charter a confirmation of their privilege of exemption from criminal jurisdiction, although in the Stat. de Diversis Libertatibus Clero concessis<sup>3</sup>, made but thirty years before, theft, robbery, and murder are mentioned as crimes committed frequently by priests; and, 2dly, they were privileged from answering in courts

<sup>1</sup> Hody's Hist. of Conv. pp. 153, 154.

<sup>2</sup> Rolls of Parl. 18 Edw. 3. § 24. In 1344.

<sup>3</sup> St. 9 Edw. 2. 1313.

of law for exhibition of titles of lands purchased, nor for tithes due.

These privileges, with others of less moment, they obtained upon this occasion. Seven years afterwards<sup>1</sup> the Clergy addressed a petition to the King in Parliament to be relieved from obedience to the criminal jurisdiction, even in cases of high treason.

But let us follow the contest between the nation and its priests. The detection of one fraud had led naturally to the suspicion of others; enquiry proceeded from their possessions to their doctrines, which began to be distrusted. What had for ages been taught as infallible truths were found, upon enquiry, to be monstrous forgeries to impose upon credulity and ignorance. Thus it is with all changes; for as in nature around us we see how change leads to change, whether in growth or in decay, so in society abuse breeds abuse, and reform reforms, which, as remarks the wise Florentine, are like houses newly built in cities, where stones are left projecting the easier to join others to.

In the following reign of Richard II., in its beginning, his minority, and afterwards his subserviency to the churchmen, (which, with other causes, led to his deposition,) gave them a manifest advantage.

The House of Commons pursued their measures of reform by bills, sometimes against the first fruits<sup>2</sup>

<sup>1</sup> Rolls of Parl. 25 Edw. 3. § 60.

<sup>2</sup> Id. 6 Rich. 2. No. 28. 1382.

of ecclesiastical dignities being sent abroad, which they proposed should be kept and spent at home: sometimes against livings bestowed upon aliens<sup>1</sup>: sometimes against the scandalous usurpations of the Court of Rome, in defiance of the laws of England<sup>2</sup>: at others against the clergy's evasions of the statute of mortmain by false conveyances<sup>3</sup>; and against their purchasing lands.<sup>4</sup> Against one very gross and general abuse they obtained a statute<sup>5</sup>, which enacted, that in all appropriation sufficient provision should be made for the discharge of the religious duties, and for the poor of the parish. For it had been customary to bestow livings on monks, who drew their tithes and remitted them to other countries.

On the other hand, the clergy were taking measures to maintain their power, which, accustomed as men had been to their frauds, astonish by their audacity.

In the year 1382, an assembly of clergy was summoned by Archbishop Courtney, where the doctrines of the reformers or protestants were condemned.<sup>6</sup> In the decisions of this assembly it is said, that these doctrines were spread and publicly preached, as well amongst the people of high as of low condition, — “*tam inter magnates quam populares regni.*” These decisions were confirmed

<sup>1</sup> Rolls of Parl. 5 Rich. 2. No. 19.

<sup>2</sup> Id.

<sup>3</sup> Id. 15 Rich. 2. § 39.

<sup>4</sup> Id. 17 Rich. 2. § 32.

<sup>5</sup> Id. 15 Rich. 2. § 38. 1391.

<sup>6</sup> Hody's Hist. of Conv. p. 235.



in a convocation of the same year, where a subsidy was granted by the clergy for extirpating the reformers, some of whom were condemned by virtue of the Archbishop's decisions.

But these had been idle words, mere empty sounds, without the aid of the civil power. Accordingly a statute was drawn up in regular form, engrossed in the statute roll and proclaimed throughout England. This being the first statute upon record made against religious liberty, and describing the progress of the Reformation, deserves consideration.

“ Forasmuch as it is openly known that diverse evil persons within the realm, going from county to county, and from town to town, in certain habits, under dissimulation of great holiness, and without the licence of our holy father the Pope, or of the ordinaries of the places, or other sufficient authority, preaching daily, not only in churches and church-yards, but also in markets, fairs, and other open places where a great congregation of people is, diverse sermons containing heresies and notorious errors, to the great emblemishing of the Christian faith, and destruction of the laws and estate of the holy church, to the great peril of the souls of the people, and of all the realm of England, as more plainly is found and sufficiently proved before the reverend father in God the Archbishop of Canterbury and the bishops and other prelates masters of divinity, and doctors of canon and civil law, and a great part of the clergy of the said realm especially

assembled for this cause ; which persons do also preach diverse matters of slander, to endanger discord and dissension between diverse estates of the said realm, as well spiritual as temporal, in exciting of the people, to the great peril of all the realm ; which preachers cited or summoned before the ordinaries of the places, there to answer to that whereof they be impeached, will not obey their summons or commandments, nor care for their monitions nor censures of the holy church, but expressly despise them ; and moreover, by their subtil and ingenious words do draw the people to hear their sermons, and do maintain them in their errors, by strong hand and by great riots : It is ordained and assented in this present Parliament, that the King's commissions be made and directed to the sheriffs and other ministers of our Sovereign Lord the King, or other sufficient persons learned ; and according to the certification of the prelates thereof to be made in Chancery from time to time, to arrest all such preachers, their fautors, maintainers, and abettors, and to hold them in arrest and strong prison, till they shall justify themselves according to the law and reason of the holy church : And the King will and commandeth that the Chancellor make such commissions at all times, that he by the prelates, or any of them, shall be certified and thereof required as of aforesaid.”<sup>1</sup>

Yet this pretended statute, “ ordained and

<sup>1</sup> St. 5 Rich. 2. st. 2. c. 5. In 1382.

assented in this present Parliament," as it alleges, was a gross forgery by the priests, as is proved by the rolls of Parliament of the following session.

Immediately upon the re-assembling of Parliament, the House of Commons brought in and passed the following bill, which having received the assent of the Lords and of the King, was enacted into a statute, in these words:—“Whereas a statute was made in the last Parliament, in these words:—‘It is ordained in this present Parliament, that commissions of the King be directed to sheriffs and other ministers of the King, or to other sufficient persons, after and according to the certifications the prelates shall make to the Chancery, from time to time, to arrest all preachers, favourers, maintainers, and abettors, and to keep them in arrest and strong prison until they are willing to justify themselves according to reason and the law of the holy church: And the King wills and commands that the Chancellor make such commissions as often as it is certified and required to him by the Prelates, or any of them, as above is said:’ which was not assented nor granted by the Commons; but as it was made without any assent of theirs, that this statute be annulled, for it is not their intent to be judged nor obliged, neither them nor their successors, by the prelates, no more than their ancestors have been in times passed. Royal assent.—Y. Plest au Roi.”<sup>1</sup>

<sup>1</sup> Rolls of Parl. 6 Rich. 2. § 53. In 1392.

If the reader feel astonishment how so audacious a forgery could have been palmed upon the public, I beg him to remember, that anciently the rolls of Parliament were usually engrossed after the dissolution or prorogation by the clerks of Parliament who were priests, and the statute-roll copied from them, under the direction of the Lord Chancellor and his officers, who were priests likewise. And it is worthy of remark, that Lord Scroop of Bolton had been removed immediately before, upon a slight pretence, from the office of Lord Chancellor, and Robert Braybroke, Bishop of London, placed in his stead. By this man's orders, as Lord Coke informs us<sup>1</sup>, the forged statute was inserted in the Parliament writ of proclamation under the Great Seal, and proclaimed by the sheriffs among the acts of Parliament, where it continues still. Meanwhile the real statute, which had declared the forgery null and void, "hath by the prelates ever from time to time been kept from the print."<sup>2</sup>

Again in the year 1392<sup>3</sup> great efforts were made by the clergy and by the King, and a Parliament was packed "by threats, bribes, and various terrors<sup>4</sup>," which afterwards formed one of the charges against Richard upon his trial and deposition; in which, among other things prejudicial to the country, the statute already mentioned against

<sup>1</sup> Lord Coke's Inst. 4. p. 51. And Inst. 3. c. 5. p. 41.

<sup>2</sup> Inst. 3. Inst. c. 5. p. 41.

<sup>3</sup> Rolls of Parl. 16 Rich. 2. § 7, 8.

<sup>4</sup> Id. 1 Hen. 4. In 1400.

alien priories was suspended, and leave given to the King to grant foreigners licences to hold benefices.

In the year 1396<sup>1</sup> the Archbishops of Canterbury and York, for them and the whole clergy of their provinces, made solemn protestation in Parliament, that they in no wise meant or would assent to any statute or law made in restraint of the Pope's authorities, but utterly would withstand the same to their utmost power. This protestation was at their request engrossed in the rolls of Parliament.

The trial and deposition of Richard II. closed his misrule. Among his most fatal errors was that of becoming a partizan of the priests and their abuses, now become odious to the nation.

Upon thirty-three charges, notorious and confessed, Richard was deposed<sup>2</sup>, of which one was, his "submitting the statutes of the realm to the Pope for confirmation, although the crown of this realm is and ever has been imperial and free," confirmatory of the existing law; for in this very reign a declaratory statute had been enacted against papal usurpations, in which are the following words<sup>3</sup>: "And so the crown of England, that hath been so free at all times, that it hath been in no earthly subjection, but immediately subject to God in all things touching the regality of the same crown, and to none other, should be submitted to the Pope, and the laws and statutes of the realm by him de-

<sup>1</sup> 20 Rich. 2. § 22. Rolls of Parl.

<sup>2</sup> Rolls of Parl. 1 Hen. 4. In 1400.

<sup>3</sup> St. 16 Rich. 2. c. 5.

feated and avoided at his will, in perpetual destruction of the sovereignty of the King our Sovereign Lord, his crown and regality of all the realm, which God defend."

Indeed the ecclesiastical jurisdiction of Parliament had in all times been absolute and supreme, as is manifest from infinite records.<sup>1</sup>

The fate of Richard did not deter Henry IV. from persisting in the self-same course ; so interwoven with this superstition are the feelings of kings.

Nor did the nation relax its efforts. Hitherto they had been directed against certain of the most notorious abuses, and especially to protect the country from papal pillage ; but in this and in the following reign, we shall see that as the Reformation gained ground, and the mask of religion was stripped off, and mankind opened their eyes to the gross frauds that had for ages been imposed upon them, so their efforts became proportionate. We shall see likewise, in the bills passed by the Commons, in what sense and under what conditions the possessions that had been bestowed upon churchmen were considered as their property. And as this subject is of such high interest to the public, they will not be displeased, I trust, by entering into details.

In the 2d year of Henry IV.'s reign, the House of Commons passed the following bills to reform the abuses of the clergy : —

<sup>1</sup> See Sir Matth. Hale's *Prerog. Regis*, MS. Brit. Mus. Harg. Coll. No. 94. pp. 17, 18.

1st, "That the King seize into his hands the benefices held by aliens during the war, as had been accustomed."<sup>1</sup> The King's answer was, "The king will be advised by the lords and clergy."

2d, They address the King, "that the statutes and ordinances of provisors against cardinals and other aliens be executed."<sup>2</sup> And a statute of confirmation was enacted accordingly.<sup>3</sup>

3d, They passed a bill "against pluralities, especially those granted by the Pope, and to oblige the clergy to reside on their livings."<sup>4</sup> The answer was, "The King will ordain remedy by advice of the prelates."

4th, Against appropriations, under the same pain as was incurred by breach of the statute of provisions.<sup>5</sup> Answer, *s'avisera*.

5th, Against a scandalous abuse, a bill was passed to protect the people from abbeys and priories purchasing lands, and oppressing and extorting from their tenants<sup>6</sup>; while they (the abbeys and priories) refused to pay the charges and encumbrances those lands were subject to. The bill says they had practised these extortions under the cover of "royal grants." The King's answer is, "Such grants are recalled, and new protections shall be made according to law."

Lastly, In this session the House of Commons, to protect the personal freedom of the subject, passed

<sup>1</sup> Rolls of Parl. 2 Hen. 4. § 58.

<sup>2</sup> Id. § 21.

<sup>3</sup> Id. § 42. 63. 90.

<sup>4</sup> Id. § 50.

<sup>5</sup> Id. § 51.

<sup>6</sup> Id. § 58.

the following declaratory bill, "That none be arrested or imprisoned contrary to the Great Charter, with answer and judgment given."<sup>1</sup> The King's answer is, "Let the statute and common law be observed." As this was a mere evasion, the Commons immediately passed a bill in the following terms, making the remedy more clear and definite:—"That if any man or woman of any condition be taken and imprisoned for Lollerie (in other words for the Protestant religion), that immediately they be admitted to their answer, and that judgment be given thereon." This bill was enacted into a statute.

When we come to the conduct of the clergy we shall see the urgent occasion there was for insisting upon this law.

In the following Parliament, the Lord Chancellor, in the speech from the throne, informed the Parliament, that the King had commanded him to state, "that it was the royal will that holy church should be maintained, as it had been in the time of his progenitors, with all its liberties and franchises."

The Commons, upon their return to their own house, immediately addressed the King "to remove his confessor and two others from his household<sup>2</sup>," which he complied with, but added, that he knew nothing that could be laid to their charge.

Then they proceeded with the following bills:—

<sup>1</sup> Rolls of Parl. 2 Hen. 4. § 60. 91.

<sup>2</sup> Id. 4 Hen. 4. In 1402.



1st, That the King recall his licences for accepting provisions from the Pope.<sup>1</sup> Which was done.

2d, The following most important statute was made in these words<sup>2</sup>: "It is enacted by the King and Lords in this Parliament, at the urgent prayer of the Commons, that alien priories, with all their possessions, fees, advowsons, lands, and tenements (except conventual priories), be seised into the King's hands." This statute granted power to the King to dispense, in certain cases, with the advice of the Council, and by this means the King evaded the law, as we shall see.

3d, The Commons passed this bill<sup>3</sup>, "that all French monks and other religious persons (of that nation) be banished the realm, and their possessions seized." Answer. "Granted, with licences of reservation to the King and Council."

4th, The statute of appropriations was confirmed.<sup>4</sup>

5th, That the salaries of chaplains be limited.<sup>5</sup>

6th, That all clergy be obliged to reside within their benefices.<sup>6</sup> Answer. "The King will command the prelates to apply a remedy." Which they never did.

7th, And lastly, a statute was made to prohibit those monks called Minors, St. Augustins, Preachers, and Carmelites, from receiving into their orders any child, under fourteen years of age, without the consent of the parents<sup>7</sup>; and also that

<sup>1</sup> Rolls of Parl. 4 Hen. 4. § 22.

<sup>2</sup> Id. § 23.

<sup>3</sup> Id. § 48., and st. 5 Hen. 4. Rolls of Parl. § 34.

<sup>4</sup> Id. § 52.

<sup>5</sup> Id. § 57.

<sup>6</sup> Id. § 58.

<sup>7</sup> Id. § 62.

no friar steal any child, or detain it contrary to the will of the parents.

In the following Parliament, 1. A statute was made against the excessive sums exacted by the Pope from archbishops, bishops, and others, for provisions, exceeding the ancient dues to which they were confined for the future, under pain of forfeiture.<sup>1</sup>

2. The House of Commons pass a bill for the resumption of all grants made of crown lands to laymen and clergy, since the 40th of Edward III.'s reign.<sup>2</sup>

In this same parliament the House of Commons proposed to the King to seize upon the revenues of the clergy; but let it be well observed that in this proposal was not included the necessary livings of the parochial clergy, but the lands and other properties of the bishops, abbots, priors, and other dignitaries. This affair is entirely suppressed in the rolls of Parliament, whether because it was made by speech and not in form of bill, or whether it had been purposely suppressed by the clerk of Parliament, is unknown; a practice too frequent in this age, and of which we shall presently see examples.

When the King represented to this Parliament his great want of an extraordinary aid, the Commons went in a body and remonstrated by their Speaker, Sir John Cheyne<sup>3</sup>, and said, That with-

<sup>1</sup> Rolls of Parl. 6 Hen. 4. § 57.

<sup>2</sup> Id. § 14—20.

<sup>3</sup> Walsingham, pp. 414, 415, 416. Turner's Hist. of England, Henry IV.'s reign, p. 358. Parl. Hist. vol. i. pp. 295, 296, 297.

out burdening his people he might supply his occasions by seizing on the revenues of the clergy.

They set forth that the clergy possessed a third part of the riches of the realm, and not doing the King any special service, it was but just they should contribute out of their revenues towards the pressing necessities of the state. That it was evident the riches of the clergy made them negligent in their duties, and the lessening their excessive incomes would be a double advantage both to the church and to the state.

The Archbishop of Canterbury answered, That though the ecclesiastics served him not in person, it could not be inferred that they were unserviceable, since they sent into the field their vassals and tenants, whenever there was occasion. That the stripping the clergy of their estates would put a stop to their prayers night and day for the welfare of the state, and there was no expecting God's protection of the kingdom if the prayers of the church were so little valued.

Then falling upon his knees before the King, strongly impressed upon him that, of all the crimes a king could commit, the most heinous was an invasion of the church property. Henry answered, Though he blamed not his zeal, he could not help saying that his fears were groundless; for when he mounted the throne, he made a firm resolution to support the Church with all his power, and hoped, by God's assistance, to leave her in a better state than he found her.

Thus ended, for the present, this proposal of the Commons.

In the following Parliament, they address the King to banish all French aliens<sup>1</sup>; and this address being neglected, they made out a schedule of their names, and insist upon their immediate dismissal.

In the eighth year, the House passed bills for these objects:—1st, That the King should have one half of the fruits and profits of all churches where the parochial clergy do not reside upon their benefices. And that the King will seize all benefices held by aliens residing abroad.<sup>2</sup> Answer. As pluralities are the great cause of absence, the King will write to the Pope to revoke his licences for pluralities.

2d, That no one, secular or regular, purchase or execute any bull to free lands from the tithes they had been liable for by law.<sup>3</sup> Which was made a statute.

3d, Against pursuing causes in the Court of Rome, and for enforcing the statute of provisors. The King's answer is, "Let the statutes be kept, reserving the King's powers by statute, to moderate them.

4th, "Against obtaining presentations to churches from the court of Rome, and disturbing those in possession.<sup>4</sup> This was made a statute.

5th, Another bill against provisors<sup>5</sup>, wherein the

<sup>1</sup> Rolls of Parl. 7 Hen. 4. § 16. 29.

<sup>3</sup> Id. § 113.

<sup>4</sup> Id. 8 Hen. 4. § 119.

<sup>2</sup> Id. § 114.

<sup>5</sup> Id. § 134.

Commons urge the execution of these laws. But the answer is, *Le roi s'avisera*.

In the 9th year of this reign, we find only the two following bills<sup>1</sup>: — 1st. That the extortions of the Pope's collector be prohibited, and that no one be compelled to pay upon any such process. Made a statute.

2d. That all persons desiring licences to purchase the temporal possessions of aliens may have license so to do.<sup>2</sup> Answer, *S'avisera*.

In the 10th year of Henry IV. a second attempt was made by the House of Commons to apply the lands possessed by the bishops, abbots, and priors to the service of the state.

Here let it be well observed that neither upon the former nor yet upon this occasion did the Commons question the right of the true minister of religion to be duly paid for his labours.

As all that regards this important measure is suppressed in the rolls of Parliament, although allusion is made to it, I quote from Walsingham. His account of it is as follows: —

1st. "That the knights in Parliament, or to speak more truly, the satellites of Pilate," presented to the Lords a bill to seize upon the possessions of the bishops, abbots, and priors, with a schedule of their extent.<sup>3</sup> But that the King rejected the bill.

<sup>1</sup> *Rolls of Parl.* 8 Hen. 4. § 43.

<sup>2</sup> *Id.* § 47, and 11 Hen. 4. § 67.

<sup>3</sup> *Walsingham*, p. 422.

2d. That the Commons, or “that execrable assembly of heretical knights, urged that the clergy convicted of crimes should not be delivered up by the civil judges into the prisons of the bishops.”

Whence, as we shall see presently, they were suffered to escape with impunity. But the King refused his assent.

3d. That Henry besought the Parliament that they should grant him for life the customary subsidy without the necessity of summoning another Parliament. But this he could not accomplish.

Rapin’s account of this affair is more minute. He says, “Wickliff’s doctrine had gained so much ground that the majority of the House of Commons leaned that way.”<sup>1</sup>

Thus biased, the Commons presented to the King two petitions, one against the clergy, the other in behalf of the Lollards.

“In the first they set forth that the clergy made a bad use of their riches, and consumed their incomes in a very different manner from the donors’ intent; that their revenues were excessive, and consequently it was necessary to lessen them; that so many estates might easily be seized as would serve to provide for 150 earls, at the rate of 3000 marks a year, 1500 barons at 100 marks a year, 6200 knights at forty marks each, and 100 hospitals at 100 marks.

“That by this means the kingdom’s safety would

<sup>1</sup> Rapin’s History, vol. i. book 2.

be better provided for, the poor better maintained, and the clergy more attached to their duty."

In the second petition the Commons prayed that the statute passed against the Lollards in the second year of this reign might be repealed, or at least qualified with some restrictions.

The Commons missing their aim, petitioned that the clergy convicted of crimes should not be delivered from the bishops' prisons; alleging for reason that experience proved that they always by that device escaped the punishment they deserved.

The King's rejection of these bills did not hinder the Commons from pursuing their great measures of reform. In the 11th and last year of this reign they passed the following bills: —

1st. That they may reconsider a bill regarding the condition of the Lollards, and that nothing be enacted upon it.<sup>1</sup> The bill allowed to be withdrawn. This bill is suppressed.

2d. That no sums of money, gold, or plate be sent to Rome by those advanced to benefices by the Pope.<sup>2</sup> The answer was, "Let the statutes be kept."

3d. That all such persons as shall be arrested by force of the statute made against Lollardy, the 2 Henry IV., be bailed, and freely make their purgation<sup>3</sup>; that they be arrested by no other than the

<sup>1</sup> Rolls of Parl. 11 Hen. 4. § 12.

<sup>2</sup> Id. § 27.

<sup>3</sup> Id. § 29.

sheriff, or such like officers, neither that any havoc be made of their goods.

4th. That the common people by scarcity of corn and mortality of their cattle cannot support the taxes and tallages.<sup>1</sup> And that on the other hand, the clergy ought to be personally resident on their benefices in aid and support of their parishioners; yet some are in office at court, and some in the courts of other seigneurs, others dwell at Oxford or Cambridge, or in abbeys and priories, and there spend their means, and attend not to their cures, nor do their duties.

“ Be it enacted, That in all benefices where by the law residence is required, and where the incumbents possess pluralities, may be seized, and one half given to the incumbents, and the other half levied to the profits of the state.”

The King's answer was, “ This matter belongs to the holy church. As to residence, remedy was made in last convocation. As to the rest, Le roi s'avisera.”

Having now traced throughout this reign the various measures of the Commons to reform the abuses of the Church, let us turn to the arts employed by the clergy in defence of their doctrines and riches.

In the year 1400 the prelates and clergy presented the following petition to the King, which received the royal assent, and was published and carried into immediate execution : —



“Whereas it is shown to our Sovereign Lord the King, on behalf of the prelates and clergy of the realm of England in this present Parliament, that although the Catholic faith builded upon Christ and his apostles, by the holy Church sufficiently determined, declared, and approved, hath been hitherto by good and holy and most noble progenitors of our Sovereign laudably endowed, and in her rights and liberties sustained, without the same Church being hurt, or oppressed, or perturbed by any perverse doctrines, or wicked or heretical opinions; yet, nevertheless, diverse persons, false and perverse people of a certain new sect, of the faith of the sacraments of the Church and the authority of the same damnably thinking, and against the law of God and the Church, usurping the office of preaching, do perversely and maliciously, in diverse places within the said realm, under the colour of dissimulated holiness, preach and teach in those days openly and privily diverse new doctrines, and wicked, heretical, and erroneous opinions, contrary to the doctrines of the Church. They make unlawful conventicles and confederacies; they hold and exercise schools; they make and write books; they do wickedly instruct and inform the people, and as much as they may excite them to sedition and insurrection, and maketh great strife and division among the people.”

The act then proceeds to state the inability of the diocesans by spiritual jurisdiction to stop these

orders, and that the reformers despised the Church censures.

The King having considered the above petition of the clergy, with the consent of the Lords and Commons, to preserve the estates, rights, and liberties of the Church, ordains that none henceforth preach without licence of the diocesan openly or privately, nor teach, write, or hold schools for teaching the new doctrines, nor keep books in his possession beyond forty days from the passing of this act, which contain such heretical doctrines. And then the statute empowers the diocesans to arrest and imprison all who hold, or favour, or maintain opinions contrary to the doctrines of the Church, until they abjure these opinions; and if they will not abjure them, then they are to be delivered over to the civil magistrates, by them to be burnt in some public place, according to the sentence of the Church.

We have already proved that the statute made against the Reformers in 1382 was a forgery of the clergy. That had stopped short at imprisonment, but this inflicts the punishment of death for freedom in religious opinions and for instructing the people. Like the former, this statute is a forgery. For the statute asserts<sup>1</sup>, that not only the prelates and clergy petitioned and assented to its enactment, but that the Commons joined in the petition, which is manifestly false from the record: which shows<sup>2</sup>

<sup>1</sup> Statutes of the Realm, 2 Hen. 4. c. 15.

<sup>2</sup> Rolls of Parl. 2 Hen. 4. § 48.; and 11 Hen. 4. § 29.

that the clergy presented this petition after the Parliament had been dissolved, and the King had dismissed the members to their homes, and that the knights and burgesses had received orders to sue out the usual writs for their wages.

Lord Coke says, "that this statute was disavowed by the Commons, and yet the pretended act printed."<sup>1</sup>

From the spirit of the Commons, it may be supposed that they did not tamely submit. Accordingly, upon the re-assembling of Parliament they passed the bill already mentioned: "That none be arrested or imprisoned contrary to the great charter, with answer and judgment given."<sup>2</sup> And the king evading this by his answer, "Let the statute and common law be observed," they drew up the following bill:—"That if any man or woman of any condition whatsoever be arrested or imprisoned for Lollerie, they may have their answer and such judgment as the case deserves, as an example to others of the said bad sect, and to stop by gentle means their evil preachings, and hold them to the Christian faith."<sup>3</sup> This was enacted a statute, but was never printed; being unsuitable to the spirit, and unfit to serve the ends of the clergy, who preferred the dungeon and the stake to gentleness and persuasion.

In the fourth Parliament of this reign the clergy presented the following petition. Having claimed

<sup>1</sup> 4 Instit. p. 51.

<sup>2</sup> Rolls of Parl. 2 Hen. 4. § 60.

<sup>3</sup> Id. § 91.

their privileges of freedom from civil jurisdiction, they say, "Nevertheless, divers clergy and monks lately indicted, arraigned, or impeached of crimes and felonies which do not touch the King's person, or royal majesty, and some because they are common highway robbers, despoilers (*depopulatores agrorum*), and waylayers, and therefore are charged before the secular judges, although the same clergy and monks claim the privilege of clergy, and the local ordinaries desire to receive the same clergy and monks; yet by the same secular judges they are condemned to death, and in different manners suffer death, to the great offence of God and manifest violation of the liberties of the Church."<sup>1</sup>

Upon this petition of the clergy, a statute was framed confirming their privileges, and ordaining that no priest nor monk should be tried by any civil jurisdiction. The preamble to this statute proves the close alliance between the King and the priests. "Our Lord, the King having, in remembrance of the faithful hearts and inward affection that the clergy of England hath born to him, and also the great charges which the same clergy hath had and sustained for his honour and profit after the time of his coronation, and therefore willing to be a gracious lord to them in their affairs<sup>2</sup>," &c. "That if henceforth any clerks shall be indicted upon these words, 'waylayers and despoilers,' or others to the like effect, yet nevertheless such

<sup>1</sup> Rolls of Parl. 4 Hen. 4. § 30.

<sup>2</sup> Statute 4 Hen. 4. c. 2.

clerks shall have and enjoy the privilege of holy Church, and shall be delivered to the ordinaries them demanding, or their deputies, without any impeachment or delay."

The clergy having gained this point, proceeded to another, to exempt themselves from all treasons not touching the King's person, or royal majesty, by the following statute: — "That any clerk convicted of treason that toucheth not the King himself nor his royal majesty, or that he be a common thief, and for such notoriously holden and reputed, and for the same cause as clerk convict shall from henceforth be delivered to the ordinary, that he shall be held in surety by the ordinary, according to the effect of a provincial constitution."<sup>1</sup>

By these statutes priests of all sorts might commit whatsoever crimes they pleased with impunity; for, as we have already seen, the House of Commons passed a bill that clergy convicted of crimes should not be delivered into the keeping of the ordinaries, alleging for reason, "that experience proved that they always by that device escaped the punishment they deserved." But this bill the King rejected.

Thus backed in their crimes by the King, and secure in their impunity, we shall see the clergy pursue a bold and bloody course.

In 1406. The 7th of Henry IV.<sup>2</sup>, the Prince of Wales, (bribed, Mr. Prynne says, by the clergy,) in

<sup>1</sup> Statute 4 Hen. 4. c. 3.

<sup>2</sup> Rolls of Parl. 7 Hen. 4. § 30.

the name of the Lords spiritual and temporal, and Sir John Tiptoft, Speaker of the Commons, in their name presented a bill against the Reformers, to endure until the next session of Parliament, which received the royal assent. It invested the civil magistrates with new powers to arrest all who should preach or teach contrary to the dogmas of the Church. It pretends that if these new doctrines are not stopped, their authors will move the people to take away the estates of the temporal Lords. How malicious this pretence was we have now had three centuries to prove.

This, the record says, the King granted with the advice and assent of the Lords in Parliament.

How far, or whether at all, the Commons were assenters to this bill, I cannot find. It is not printed with the statutes; and it is evident that some gross forgery had been attempted, for there follows in the same session the following bill from the House of Commons: — “That certain of the Lords spiritual and temporal, and certain of the Commons whose names they had written in a schedule, should be appointed to be present at the enactment and engrossment of the rolls of Parliament; and that this be placed upon record<sup>1</sup> ;” which was done accordingly. Whether the Prince of Wales had been bribed, I do not know; but it is evident that the Speaker had.<sup>2</sup> For at the end of the session he received “Grants of a great manor in Wales, an

<sup>1</sup> Rolls of Parl. § 65.

<sup>2</sup> Rolls of Parl. 7 Hen. 4. § 103.

estate in Leycestershire, the rangership of two forests, besides a pension of 120 marks a year and a butt of wine."

In the year 1410 the King, by an order in council, issued a warrant that Thomas Badby, convicted by the clergy of having denied the host to be the body of Christ, and having affirmed that it was a mere bit of bread, should be publicly burnt in Smithfield; where he was burnt accordingly.<sup>1</sup> The Prince of Wales was present, and when Badby had suffered from the fire, he caused it to be removed, and promised him life if he would recant and pay a fine to the King; but this the poor man refused, so he was replaced at the stake, and died constant and firm.

We are now come (1413) to the short but eventful reign of Henry V., in which we shall pursue, as before, the contest between the country and its priests.

In the first Parliament the House of Commons passed the following bills: —

1st. That by the custom and law of the land for the proof and acquittance of testaments not more than eleven shillings and sixpence shall be exacted<sup>2</sup>; yet the ordinaries, commissaries, and their officials sometimes charge 100*l.*, sometimes 40*l.*, sometimes 10*l.*, or more or less as they can, contrary to the law of the realm and to the oppression of the

<sup>1</sup> Walsingham's Hist. p. 421. Rapin, vol. i. book 2.

<sup>2</sup> Rolls of Parl. 1 Hen. 5. § 23.

people. The petition prays that the former dues may be re-established, and that the justices may have powers to determine all such differences. Answer: The King will charge the Lords spiritual to ordain remedy; and if they will not do it, he will keep it in mind.

2d. Against fines imposed on church courts for certain offences.<sup>1</sup> Answer, as before.

3d. Against foreigners holding benefices that they may be voided the kingdom according to law, and honest men of the county be put in their place. That these foreigners have increased, that they send out of the country great sums of money, and are spies upon the state.<sup>2</sup> This received the royal assent, under some exceptions.

4th. That all alien priories, with their fees, lands, rents, and services, be resumed and seized into the King's hands, and applied to the relief of the Commons under certain exceptions.<sup>3</sup> This received the royal assent.

The following Parliament was opened, according to custom, by a speech from the throne, in which the clergy disclosed that some design was in train.<sup>4</sup> The Bishop of Winchester, Lord Chancellor, and bastard uncle to the King, told the Parliament, "That no country can prosper where the Christian faith is not guarded; and the holy Church of England, by the malice of certain people of England

<sup>1</sup> Rolls of Parl. § 24.

<sup>2</sup> Id. § 32.

<sup>3</sup> Id. § 38.

<sup>4</sup> 2 Hen. 5. 1414. Rolls of Parl.



infected with heresies, called Lollards, has been long and grievously troubled to the great displeasure of God, who endeavour to subvert and annul the Church itself and the Christian faith, and also all the estates temporal, to be openly and finally destroyed, unless God, by the aid of the King, by the advice of the Lords and Knights in Parliament, shall ordain remedy."

But the Commons shared not the Bishop's fears of offending God by reforming the Church; accordingly they proceeded in their course.

1st. By a bill against the gross extortions of the clergy in the proof of testaments, contrary to the statute lately made.<sup>1</sup> Answer of the King, "The prelates have promised remedy."

2d. Against frauds on hospitals, in the following words<sup>2</sup>:—"That as the noble kings of England, and lords and ladies, as well spiritual as temporal as others of different conditions, have founded many hospitals in cities, boroughs, and divers other places within the realm, on which they have bestowed liberally of their lands and tenements to support blind men and women, lazar men and women insane, poor women with child, and for persons fallen into misfortune, there to be relieved, and live, and die: And now the greater part of these hospitals and their properties are withdrawn by spiritual and temporal persons, and applied to other purposes, whereby many men and women

<sup>1</sup> 2 Hen. 5. Rolls of Parl. § 14.

<sup>2</sup> Id. § 15.

have died in great distress for want of succour and food. They therefore pray that all hospitals be visited, and their funds restored to their right uses." This was enacted into a statute.

3d. Against the usurpations of the Church courts.<sup>1</sup> "That as diverse subjects are cited from day to day before the Church courts and spiritual judges, to answer regarding freeholds, debts, trespasses, and covenants, and others of which the cognizance belongs to the King's courts, and that when such persons cited demand a libel of what is surmised against them, to make their answer, or demand a writ of prohibition of the King, according to the case, they are denied it by the spiritual judges, that such persons may neither have aid nor proof, which is against law, and to the great damage of the people: Be it ordained, That none henceforth be denied such writs, and that fine be imposed upon denial." Made a law.

4th. Against prosecutions in ecclesiastical courts for tithe of wood of twenty years old and upwards, under the name of "*Silvæ Cedue*," contrary to statute law.<sup>2</sup> Referred to the next Parliament.

5th. That as in the event of a settled peace with France the alien priories will be restored, to the great damage of the realm, by the vast sums remitted as rents to the chiefs of those priories abroad<sup>3</sup>: That all such alien priories be retained in the King's hands and in those of his successors for

<sup>1</sup> Rolls of Parl. § 17.

<sup>2</sup> Id. § 19.

<sup>3</sup> Id. § 21.

ever ; making it lawful for any subject to purchase such lands. A statute was made, but suppressed.

Lastly, The House of Commons returned to that great measure, twice before attempted in vain, of applying to the service of the state the lands and other properties of the prelates.

“ The bill was founded upon the same grounds as the former ; that as the last bill had come to no effect in consequence of the then dissensions in the kingdom, that the present might be well studied, regarded, and brought to some good effect.”<sup>1</sup> — “ This bill was much feared among the religious sort, whom it much touched.” — “ To find a remedy for such a mischief, the clergy agreed to offer the King a great sum of money to stay this new demand. The cause of this offer seemed to some of the wiser prelates neither decent nor convenient ; for they well foresaw, and perfectly knew, that if the Commons perceived that they by reward or offer of money would resist their request and petition, they would despise them as corrupters of princes, and enemies of the public wealth. Whereupon they determined to cast all chances that might serve their purpose, and so employ the King that he should not regard the serious petition of his importunate Commons.” — “ Wherefore Henry Chichely, Archbishop of Canterbury, a Carthusian monk, addressed the King in Parliament to undertake a

<sup>1</sup> Hall's Chronicle, fol. 35.

war against France, under pretence of right to the crown.”

In truth, the clergy had long been plotting war, to divert the minds of men from reforms; and the Archbishop's speech may be considered as the declaration of what had already been resolved.<sup>1</sup>

Rapin adds to the account of this affair, “that the clergy delivered up the alien priories, which were 110 in number, and possessed of lands that considerably increased the revenues of the crown.”<sup>2</sup> Thus the Commons gained this point. Yet this is worthy of remark, that though the statute is recorded in the rolls of Parliament, like many others, it is not printed among the statutes themselves.

The nation was immediately plunged into a long and bloody war, begun upon shallow pretences of claims upon the crown of France, but in reality, as we have seen, to stop the progress of religious reform, and secure to the clergy their inordinate wealth. The successes obtained in its beginning absorbed all other feelings and thoughts; and from this period until the close of this reign less and less was done by the Commons in the great cause they had so long maintained. The following bills are all that are to be found upon record:—

1st. Against the exorbitant demands of chaplains in the discharge of their duties.<sup>3</sup> Made a statute.

2d, Against the scandalous frauds committed

<sup>1</sup> Rapin's Hist. vol. i. p. 511.

<sup>2</sup> Id. p. 509.

<sup>3</sup> Rolls of Parl. 2 Hen. 5. § 37.

upon the funds of hospitals, which were generally under the management of the clergy. Answer, "Let the statute be executed ;"<sup>1</sup> which was the common evasion.

3d, Against the usurpations of the lord chancellors, in these times prelates, and the grievous injustice done by them under the names of writs *sub pena* and *certis de causa*, in matters determinable by the common law. This usurpation of the Chancery had been of late invention by the priests, to subject the people more effectually to those courts wherein they presided.<sup>2</sup>

4th, Against the exorbitant demands in proving wills.<sup>3</sup>

5th, Against excessive salaries to chaplains. It seems that the clergy had evaded the statute, as no penalty had been inflicted. Answer, "Let the statute be enforced."<sup>4</sup>

6th, To enforce the grants made to subjects of the alien priories, the barons of Exchequer doing their utmost to carry these grants into effect.<sup>5</sup>

Lastly, Against a numerous body of the priests of the university of Oxford, who in arms and array of war had disseised and driven out many persons in the counties of Oxford, Berks, and Bucks, of their lands and tenements. The Commons propose to banish the said clerks from the university. The answer is, "Let the common law be observed ;"<sup>6</sup>

<sup>1</sup> Rolls of Parl. 3 Hen. 5. § 36.

<sup>2</sup> Id. § 46., and 9 Hen. 5. § 23.

<sup>3</sup> Id. 3 Hen. 5. § 47.

<sup>4</sup> Id. 7 Hen. 5. § 19.

<sup>5</sup> Id. § 23.

<sup>6</sup> Id. 9 Hen. 5. § 14.

which was another form of evasion. And here we close the proceedings of the Commons for the reformation of religion during this reign.

Let us next consider the measures of the clergy throughout this same period.

1413. — In its first year a convocation was assembled at St. Paul's, under the direction of Thomas Arundel, Archbishop of Canterbury. This prelate had obtained a commission to be sent down to Oxford, to enquire into the doctrines of the Reformers. The object of which was to discover the chiefs of the new religion, and how it came to spread. Upon their return they laid their information before the convocation. After debate it was resolved, that it was not possible to extirpate heresy unless by exemplary punishments.<sup>1</sup>

Sir John Oldcastle, Lord Cobham of Kent, was deemed the most dangerous of the Reformers. He had led the House of Commons in the last reign, in their great measures of reform ; he held a place in the household, and was much in the King's esteem, who had undertaken to persuade him to abandon his opinions, but failing, delivered him over to the clergy. When summoned he refused to appear, and was apprehended by the King's orders. He was tried by the church court, but remained steadfast to his faith : they pronounced him heretic, and delivered him over to the civil power.<sup>2</sup>

<sup>1</sup> Rapin's Hist. vol. i. book 2. p. 505. Walsingham, pp. 427. 430.

<sup>2</sup> Hody's Hist. of Convocations, p. 255.

The second Parliament began with a speech, already noticed, from the throne, by the Bishop of Winchester, the Lord Chancellor, which boded a persecution. The people in many parts of England had risen in arms in defence of their religious rights ; and the clergy seized eagerly the occasion to obtain new laws against the Reformers, as designing to subvert the state, a malice that subsequent ages have disproved.

We have already seen that in this Parliament the House of Commons passed several excellent measures to abolish the abuses in the Church, and even proposed the seizure of the lands of the prelates.

They willingly joined the King to enforce the laws, and even vested new powers in the King and council for the suppression of the riotous assemblies ; but this did not satisfy the clergy : their object was not peace, but persecution ; and we shall now see by what arts they accomplished their designs.<sup>1</sup> The following is entered in the record of this Parliament and published among the statutes : —

“ Forasmuch as great rumours, and congregations, and insurrections, here in the realm of England, by divers of the King’s liege people, as well by them which are of the sect of heresy commonly called Lollardry as by others of their confederacy, excitation, and abettment, now of late years were made, to the intent to annul, destroy, and subvert the Christian faith, and also to destroy our Sovereign Lord the King, and all other manner of estates of the

<sup>1</sup> St. 2 Hen. 5. c. 8.

realm, as well spiritual as temporal, and also all manner of policy, and finally the laws of the land: Our Sovereign Lord the King, to the honour of God, and in conservation and fortification of the Christian faith, and also in salvation of his royal estate of all his realm, willing, against the malice of such heretics and Lollards, to provide a more open remedy and punishment than hath been had and used heretofore; so that, for fear of the said laws and punishments, such heresies may the rather cease in time to come; by the advice and assent aforesaid, and at the prayer of the said Commons, hath ordained and established,—

“ 1st, That the chancellor, treasurer, justices of both benches, justices of peace, sheriffs, mayors, and all other officers having governance of the people which now be or shall hereafter be, shall make an oath on taking office, to put their whole power and diligence to put out and destroy all manner of heresies and errors, commonly called Lollardries, within the places where they exercise their offices and occupations, and that they assist the ordinaries and their commissaries, and them favour and maintain, as often as they or any of them shall be required by the said ordinaries or commissaries.

“ 2d, That all persons convict of heresy, of what condition soever, shall forfeit their lands and tenements, and all their goods.

“ 3d, That justices of the bench and of the peace have power to enquire of all heretics and Lollards, their favourers and sustainers; of all writers of



books, of preachers of sermons, of schools, conventicles, congregations, and confederacies; and that this clause be put in the commissions of the peace.

“ 4th, That judgment of heresy belongs to the spiritual judges, and not to the secular judges; and that heretics arrested by the magistrates shall be delivered to the commissaries within ten days after arrest.”<sup>1</sup>

Were we not absolutely certain that the clergy had already been detected in two forgeries of statutes against the Reformers, it would be hard to believe that this formal act was a forgery; but it is harder still to believe that the same House of Commons that had passed bills against the various extortions of the clergy, their frauds upon hospitals, the usurpations of church courts, against alien priories, and, lastly, for seizing the lands of the prelates, and applying them towards the expenses of the state, should yet arm the clergy against themselves. Nor did they; for although the King, and perhaps the House of Lords, might have given their sanction to this pretended statute, that the Commons were neither assenters or petitioners is demonstrated by the following entry in the Rolls; and be it well marked, that a similar declaration is made by the Commons against every similar pretended statute.

“ Be it remembered, that the Commons presented a bill to our Lord the Sovereign in this present Parliament, of the following terms, word for word: —

“ Our Sovereign Lord, — Your humble and true

<sup>1</sup> St. 2 Hen. 5. c. 7.

lieges, that come for the Commons of your land, beseechen unto your right righteousness, that so it hath ever been their libertie and freedom, that there should be no statute, no law be made unless they gave thereto their assent;—considering that the Commons of your land, the which is and ever has been a member of your Parliament, be as well assenters as petitioners; that from this time forward, by complaint of the Commons of any mischief asking remedy by mouth of the Speaker of the Commons, or else by petition in writing, that there be no law made, neither by additions neither by diminutions, by no term nor terms, the which should change the sentence and the intent asked by the Speaker's mouth, or the petitions aforesaid given up in writing, without the assent of the foresaid Commons;—considering, our Sovereign Lord, that it is in nowise the intent of your Commons, that if they ask two or three things, or as many as they please, that it stand with your high royalty to grant which of those you please, and to warne the rest.” The royal assent was given to this act in the following words: — “ The King of his grace specially granteth, that from henceforth nothing be enacted to be the petitions of the Commons that be contrary to their asking, whereby they should be bound without their assent, saving always to our liege Lord his royal prerogative, to grant and deny what pleases him of their petitions and asking aforesaid.”<sup>1</sup>

<sup>1</sup> Rolls of Parl. 2 Hen. 5.

This statute, declaratory of the ancient rights of the Commons, and forms of the Legislature, was suppressed; nor is it to be found among the statutes of the realm, not even in that edition published by authority of the parliamentary commission.<sup>1</sup>

Its importance was well known at the time of its enactment, for it is found recorded in the Customal of Sandwich<sup>2</sup>, and probably might be found in the records of other towns, were they examined with care.

Of this statute Mr. Petyt observes<sup>3</sup>: — “ Before the 2 Henry V. the course was, —

“ 1st, When the Commons were suitors for a law, either the speaker of their House, by word of mouth from them, the Lords joining with them;

“ Or, 2dly, By some bill in writing, which was usually called their petition, moved the King to ordain laws for the redress of such mischiefs or inconveniences as were found grievous unto the people.

“ 3dly, To these petitions the King made answer sometimes to part, sometimes to the whole, sometimes by denial, sometimes by assent, sometimes absolutely, and sometimes by qualifications.

“ 4th, Upon these motions and petitions, and the King’s answer to them, was the law drawn up and engrossed in the statute-roll, to bind the kingdom.

“ 5th, But this inconvenience was found in this

<sup>1</sup> Of the year 1816.

<sup>2</sup> Customal of Sandwich, Hist. of Sand. pp. 570—573.

<sup>3</sup> Jus Parliamentarium, p. 105.

course, that sometimes the statutes were framed against the sense and meaning of the Commons, at whose desire they were ordained ; and, therefore,

“ 6th, Anno 2 Henry V., the Commons having found by sad experience that the course tended to the violation of their liberty and freedom, whose right it was and ever had been, that no statute should be made without their assent ; they then exhibited a petition to the King declaring their right in this particular, praying that from henceforth no law might be made or engrossed as statutes by additions or diminutions to their motions or petitions, that should change their sense or intent, without their assent.

“ Which, 7th, Was accordingly established by act of Parliament.”

I cannot deny my reader nor myself the satisfaction to confirm this statement by a quotation from the learned Selden : — “ It is most certain,” says Selden, “ that, according to custom, no answer was given, either by the King or in the King’s name, to any parliamentary bills, before that the bill, whether it was brought in first by the Lords or by the Commons, had passed both Houses, as is known to all that are versed in the affairs and records of Parliament.

“ And when the name of either of them is left out in the draught of the bill, it was wont to be supplied, as it is also at this day, by the brief form of assent which is added to that House to whom the bill is sent and transmitted. For that House

which passes it transmits it to the other, who either give an assent or reject it.

“ And when both Houses have so given their assent, then after a while either the King gives his assent (whereby it becomes an act or law) or else he lays it aside and takes time to advise ; neither of which was ever done by the King, according to the course of Parliament, till both Lords and Commons had given their consent.

“ This I have thought fit to note here, so that truth may have room to breathe, and not be stifled by false inferences, from mistaken and misapplied premises, confirmed by the ignorance of the nature and method of parliamentary proceedings in former times, and which have of late been published to the world for good and warrantable law.

“ And in particular that the King and his council only made laws, because there were some statutes and acts of Parliament to be met with in our statute books, wherein there is no mention made either of the Lords or Commons.

“ I know there are weak men of all professions, for whom nobody can answer ; but it is an astonishment that ever such a notion should obtain with men of any share of sense and knowledge in the law of England, as of late years it hath, unless it were out of a mercenary design ; which if so, it must make them guilty of a high violation of our ancient constitution of Parliaments and of an unpardonable injury, not only to all true Englishmen

now living, but to ages that shall follow, in asserting and tempting the world to believe it."

But as this statute of 2 Henry V. was no better observed than the former, as how could it, being made to restrain the forgeries of the clergy, who filled all civil offices of state, the House of Commons, wearied with their endless evasions and frauds, in the following reign of Henry VI. found it necessary to take the remedy into their own hands, and then began the custom of drawing up their bills in the form of statutes as they do now, as may be seen in the records of Parliament.

This affords a remarkable example of that great and general truth, so often enforced by Mr. Hatsell in his *Precedents*, that never has any grievance affecting the House of Commons been effectually redressed, until it was redressed by themselves.

But let us return from this digression, drawn on by the importance of the subject, to the conduct of the clergy.

Under the colour of this law against the Reformers, which Lord Coke<sup>1</sup> includes in his List of Statutes, pretended to be enacted and afterwards disavowed, and yet still printed in the statute books<sup>2</sup>, a bloody persecution was begun.

Their chief victim was Lord Cobham<sup>3</sup>, who had escaped from prison and lain concealed until the year 1417, when he was betrayed to Lord Powis, and by him delivered up.

<sup>1</sup> 4 Inst. c. 1. p. 51.

<sup>2</sup> Rapin's Hist. vol. i. p. 509.

<sup>3</sup> Rolls of Parl. 5 Hen. 5. § 11. 14. Walsingham, p. 448.

His process was carried from the King's Bench into Parliament, the Rolls assert, at the desire of the Commons ; his sentence confirmed ; and he was executed and burnt, at St. Giles. Thus fell a man who had long led the Commons and their measures against the priests. Rapin says<sup>1</sup> he was the first nobleman who suffered for the reformed religion. For courage, learning, and capacity, he had few, if any, equals in the age he lived in, and his memory has been honoured in all subsequent times.

And now we are hastening to the close of this long and, perhaps to the reader, tedious narrative.

Henry V., in the year 1422, left his heir an infant of six months old. His uncles, the Dukes of Bedford and Gloucester, were created Protectors by Parliament.<sup>2</sup> The former undertook the war in France, the latter the government at home in his brother's absence.<sup>3</sup>

The spirit of reform, that had been slumbering for some years, now awoke with fresh vigour. The following bills were passed by the House of Commons: —1st, That all persons imprisoned for heresy be admitted to their immediate trial.<sup>4</sup>

2d, That none be cited, nor caused to answer in the Court of Chancery, for what ought to be tried at common law. Answer. " Let the statute 17 Richard II. be observed." In this reign the chancellors made constant and successful attempts

<sup>1</sup> Hist. vol. i. p. 520.

<sup>2</sup> Rolls of Parl. 1 Hen. 6. § 24.

<sup>3</sup> Rolls of Parl. 1 Hen. 6. § 26.

<sup>4</sup> Id. § 20.

to usurp the jurisdiction of the justices; for the common-law courts and the juries protected the Reformers against the persecutions and oppressions of the clergy.<sup>1</sup>

3d, Against the Irish scholars resident at Oxford and Cambridge, for their continual tumults, robberies, and murders in the counties of Oxford, Berks, Wiltshire, &c. Answer. "Let those who are subjects of the King show licence from the Justice of Ireland, and those that cannot, be banished."<sup>2</sup>

But this statute was never executed, and another bill to the same effect was passed, and a third in this same session.<sup>3</sup> We shall see presently for what ends these Irish scholars were suffered to pass unpunished.

4th, The House of Commons passed a bill that the non-resident clergy be compelled to do their duties by the Judges of the Common Law. Answer. "It is thought there is remedy sufficient."<sup>4</sup>

5th, Another and more specific bill was passed the same session, that all clergy who have the cure of souls, within twelve months from the date of the act, should reside within his parish, under the pain of another presentation. The bill states, in many parishes the children of the poor had not been christened, that church service was not performed, nor the tithes spent in the parish to the amount of a third, as had been the custom and law. Answer,

<sup>1</sup> Rolls of Parl. 1 H. 6. § 41.

<sup>2</sup> Id. § 111.

<sup>3</sup> Id. 2 Hen. 6. § 5.

<sup>4</sup> Id. 3 Hen. 6. § 38.



“ The King hath given the bill to the Archbishop of Canterbury to provide remedy, and will write to the Archbishop of York.”<sup>1</sup>

6th, That of late many honest persons, of good property and honest lives, have been arrested without legal process, nor in course of law, upon the accusation of certain suspected persons, destitute of credit, who lurk in sanctuaries, and other caverns and obscure places, and who cannot prove their accusations of enormous crimes which they never had imagined : Be it enacted, that no one arrested upon such naked accusations be put in prison nor detained there, under pain that the accuser suffer the same punishment that would have been inflicted upon the accused, had the charge been proved. Answer, “ Let the existing laws be executed.”<sup>2</sup> This was the usual evasion.

7th, Against chapters and assemblies of Freemasons, as contrary to the statute of labourers. Answer, “ They are forbidden, under pain of imprisonment and felony, to hold such chapters.”<sup>3</sup> It is plain from this, that they were equally then as in later times objects of suspicion.

8th, That divers persons have been arrested and accused of treason, felony, and Lollardy, and imprisoned in the Tower of London, and other castles and holds, some detained for a year or two without any process : Be it enacted, that all persons so ar-

<sup>1</sup> 3 Hen. 6. Rolls of Parl. § 38.

<sup>2</sup> Id. § 39.

<sup>3</sup> Id. § 43.

rested and imprisoned, be brought before the judges of the land for immediate trial. Answer, "Let the laws be observed."<sup>1</sup> The usual evasion.

9th, That as cathedrals, collegiate churches, priories, and other church benefices, were founded and endowed for religion and hospitality, that, nevertheless, they are given to foreigners who do not reside upon them, but only take the emoluments, and leave the noble edifices to fall to ruins, and the people neglected in religion, and their money transmitted to foreign lands; and that in Edward III.'s reign laws had been made to restrain this abuse: Be it enacted, that no subject do present any alien to any living, under pain of incurring the Statute of Provisors; — but the answer is, "Le Roi s'avesera."<sup>2</sup>

10th, The Commons passed another bill against wrongious imprisonment of honest persons, and of property and worth, without due course of law, upon the accusation of persons dwelling in sanctuaries. Answer, "Let the laws be observed."<sup>3</sup>

11th, Against the non-resident clergy, whereby the people, for want of teaching, fall into heresies: Be it enacted, that if any clergyman having the cure of souls, shall absent himself from his benefice for six weeks constantly, the living shall be held as *ipso facto* void, and it shall be lawful for the patron to present another; and if he shall not present in six months, then it shall be lawful for the ordinary

<sup>1</sup> Rolls of Parl. 3 Hen. 6. § 46.

<sup>2</sup> 4 Hen. 6. § 29.

<sup>3</sup> 4 Hen. 6. § 30.

to present. Answer, "It is thought that there is provision sufficient for this; and touching the execution of the laws, the lords spiritual have promised to see them executed."<sup>1</sup>

Thus much of the measures of the Commons to reform the Church until the eighth year of this reign, the period at which, as has been seen, a vast change was effected in the representation of the people. By what artifices and frauds their exclusion from their ancient rights was brought about, shall now be shown. I would not willingly press upon my reader needless details, but the subject is of the last importance; for here he will see the beginnings and motives for those abuses in the representation of his country, which now the nation call aloud to reform.

Let us proceed then to the conduct of the clergy in opposition to the measures of the Commons.

The King's infancy, the absence of the Duke of Bedford in France, accompanied by the most powerful nobles, together with thousands of knights and the best soldiers of England, left the country a prey to the plots of the priests. Their leader was Henry de Beaufort, Bishop of Winchester and Lord Chancellor, a man of vast ambition and deep cunning, who by avarice in great places had amassed immense riches, and by long experience in affairs of state knew all its crooked ways.<sup>2</sup> He crossed and traversed all the measures of govern-

<sup>1</sup> Rolls of Parl. 4 Hen. 6. § 31.

<sup>2</sup> Rapin's Hist. vol. i. p. 536.

ment; and at length, emboldened by success and the strength of the clergy, openly and in arms set at defiance the Duke of Gloucester, Protector in his brother's absence. He was charged with several offences, tried in Parliament, deprived of the Seals, and quitted the kingdom.<sup>1</sup>

But he had yet other services to perform: he was accordingly created a Cardinal, and the Pope's Legate in England, where he returned more powerful than before.

Meanwhile, abuses grew up in all departments, but especially in the administration of justice. We have already seen how the clergy nearly filled all the civil offices of state, other than the benches of common law.

The Chancery, which had in early times been scarcely more than the *officina brevium*, crept by little and little into jurisdiction, and now became a fearful instrument of oppression. Extortions of all sorts were practised, especially in matters touching the tenure of lands held of the Crown. Increased powers, both criminal and civil, were sometimes assumed, sometimes granted for a time or occasion, to the Chancellor, then held fast ever after, until this court became what it is at this day, a vast drag-net of iniquity.<sup>2</sup>

The *escheators* were turned into other means of

<sup>1</sup> Rapin's Hist. vol. i. p. 545.; and Rolls of Parl. 4 Hen. 6. § 15. Hall's Chron. fol. 104.

<sup>2</sup> Rolls of Parl. 4 Hen. 6. § 34.; and following Parl. § 32. 11 Hen. 6. § 57. 8 Hen. 6. § 54.

fraud. False juries were impannelled by them, and estates seized under various pretences.<sup>1</sup> Many were illegally indicted<sup>2</sup>, many were sued in Parliament and in other courts regarding their freeholds, contrary to law.<sup>3</sup> And to sum up all, and leave the people without even the chance of redress, the assizes were suspended.<sup>4</sup>

But the denial of justice, and frauds under the colour of law were found insufficient to stop the progress of reformation, led by the House of Commons itself. All means were, therefore, used to frustrate or master the elections.

At this period contested elections were tried at the assizes.<sup>5</sup> And either these were suspended, so that no decision could be made, or if tried, the answers of the sheriffs and knights were not duly admitted. And this abuse continued until the House of Commons took this jurisdiction into their own hands, which affords another example of that principle of constitutional law so often enforced by Mr. Hatsell, and deduced from numberless examples, that no great abuse ever was effectually redressed affecting the members or independence of the Commons until they applied the remedy themselves.

Again, where the sheriffs could be won over by the clergy, they returned oftentimes for cities and boroughs persons not elected for those towns, in

<sup>1</sup> Rolls of Parl. 8 Hen. 6. § 56.

<sup>2</sup> Id. § 50.

<sup>3</sup> Id. of 1432, § 35.

<sup>4</sup> Id. 8 Hen. 6. § 53.

<sup>5</sup> Rolls of Parl. 6 Hen. 6. 1427, § 38.

violation of the law, but dependent creatures whom they could direct.<sup>1</sup>

These, however, were but partial measures, and much spirit, honesty, and intelligence still remained in the House. The clergy had therefore recourse to an artifice that affected all; this was the refusal by the Chancery to issue the legal writs for the wages of the members.

But this will be best explained in the words of the record itself. The House of Commons passed the following bill: — “ That the citizens and burgesses elected to come to Parliament by the election of the people of cities and boroughs in the realm have had, and of ancient time accustomed of right to have, for their wages and expenses each day during the Parliament, two shillings, that is to say, each of them two shillings for each day during the Parliament; which wages the said citizens and burgesses, and each of them from ancient times have had, and of right ought to have, their writ to the sheriff of the county wherein such cities or boroughs are, to levy their said wages, as the knights coming to Parliament have had and used. Which wages in divers cities and boroughs are now lately withheld, which is a bad example. And whereas, before the wages were withheld, many wise and notable persons came to Parliament for the good of Your Majesty and the whole realm; now none are elected nor come except people the most weak, poor, and powerless, (plus feblez, plus

<sup>1</sup> Rolls of Parl. 15 Hen. 6. No. 2.

poverez, et impotent,) and remain during Parliament living at their own cost, to their perpetual impoverishment if due remedy be not provided in this case : Be it therefore granted by Your Majesty, and by the authority of this present Parliament, that the citizens and burgesses, and each of them, may have their wages of two shillings, as aforesaid, for each day during Parliament, and at the end of each Parliament may have their writ to the sheriff to levy the said money, in like manner as the said knights of counties have, and from ancient times have had, any usage, custom, or ordinance, or usurpation, or withholding of wages to the contrary notwithstanding : Provided always, that the statute be in force as well for the citizens and burgesses in this present Parliament now assembled, as for citizens and burgesses who shall come to Parliament in time to come.”<sup>1</sup>

This declaratory bill of the ancient rights and usage of the Commons was denied the royal assent.

As we shall have occasion to return upon this change in the representation of cities and boroughs in the following chapter, and of the fatal consequences of it to the independence of the Commons, we forbear further observations here.

Yet frauds were deemed insufficient. Force was required ; and we shall see by what artifices and crimes the mastery was obtained.

Pope Martin V., licensed the Cardinal of Win-

<sup>1</sup> Rolls of Parl. 8 Hen. 6. § 51. 1429.

chester to take the tenth part of every spiritual dignity, benefice, and promotion, and by a bull, appointed him Legate in Germany, and General of a Crusade against the Bohemian Protestants then fighting successfully in defence of their faith.<sup>1</sup>

A convocation was summoned, and a subsidy granted to the Cardinal by the clergy in aid.<sup>2</sup>

He next presented his project of this pretended Crusade to the Privy Council<sup>3</sup>, of whom two were archbishops, and three bishops, besides the Cardinal himself, then replaced in the council by orders of the Lords spiritual and temporal, though contrary to the customs of England.

The council resolved to grant his petition in part; none were to be obliged, nor could be obliged, to grant money beyond their pleasure. The numbers of the forces to be enlisted were limited to 250 lances and 2500 archers, their officers to be nominated by the Cardinal himself.<sup>4</sup>

The next point was to remove the Protector. Henry being now arrived at his eighth year was crowned, and the office of Protector discontinued, under the pretence of its being inconsistent with the dignity of a crowned head. Accordingly he was removed by orders of the Lords spiritual and temporal, or rather of the former, for few of the peers were in England. The Duke of Gloucester

<sup>1</sup> Hall's Chron. fol. 110.

<sup>2</sup> Hody's Hist. of Convocations, pp. 265, 266.

<sup>3</sup> Rolls of Parl. 8 Hen. 6. § 17. 28.

<sup>4</sup> Id. § 13.



therefore retired from office, reserving only his place in council, where he was outvoted.<sup>1</sup>

And now the Parliament was summoned. In the speech from the throne, the Archbishop of York, Lord Chancellor, recounted the increase of errors and heresies, the infidelity, obstinacy, and pertinacity of the people. "That the dangers were twofold for the religion and for the state; that were such heresies rooted out the country would again prosper; and that the motives for assembling Parliament were to defend the kingdom from without, and 'errors rooted out' to preserve peace at home."<sup>2</sup>

Meanwhile the Cardinal's troops were quartered around London, and especially in Kent and Sussex, where they lived at free quarters.<sup>3</sup>

There they had been drawn to overawe Parliament, and whence they were marched to France without further thought of Bohemia<sup>4</sup>, soon after that statute had been carried through, which deprived the people in counties of their elective right hitherto immemorially possessed, and restricted it to freeholders alone of forty shillings yearly, a sum then considerable; which, as we shall presently see, was but the beginning of a system of inroads upon the Constitution, devised by the priests to arrest the progress of religion and civilisation.

While these mercenaries of the clergy overawed the southern counties, terror and desolation were

<sup>1</sup> Rolls of Parl. 8 Hen. 6. § 13.

<sup>3</sup> Id. § 45.

<sup>2</sup> Id. § 17.

<sup>4</sup> Id. § 13.

spread through the northern, and especially in the counties of Cambridgeshire and Essex, by incendiaries acting in combination. Threatening letters, extortion of money, and burning the farm yards, were committed generally without the possibility of detection.<sup>1</sup> The House of Commons passed a bill making wilful fire-raising high treason, which was made law.<sup>2</sup>

But before the end of the session, not however until the statute of disfranchisement had passed, the incendiaries were discovered to be the Irish scholars of the University of Cambridge, among whom were some from Wales and Scotland. And a law was enacted to banish them the realm.<sup>3</sup>

Here, reader, let us pause to reflect, that this scene of fraud and violence acted by the priests of Rome, 400 years ago in England, we have ourselves seen re-acted in France in 1830. We have seen its western provinces desolated by fire, as a forerunner to the ordinances of July, designed for the destruction of civil and religious liberty. And as this event is closely connected with similar events in England, and with the great measure of Reform, allow me, for a moment, to digress, and to relate facts as yet but little known.

The incendiaries began their work in the province of Normandy. In the month of April of last year several farm-houses and farm-yards were

<sup>1</sup> Rolls of Parl. 8 Hen. 6. § 37.

<sup>2</sup> Id. 8 Hen. 6. c. 6.

<sup>3</sup> Id. § 58.

there burnt down; but at different places and times, and so imputed to accident. In May, however, the fires became more and more frequent, and numberless facts left no longer a doubt that they were done by design, yet charged to individual malevolence.

But soon they began to spread throughout the province, and sometimes within a single arrondissement, from thirty to forty fires consumed the produce of as many farms. It was now discovered that the fire was applied by certain chemical preparations unknown to the inhabitants themselves; that bands of strangers with regular passports and amply supplied with money, though in all the exterior signs of wretchedness, had been tracked from place to place, leaving behind them wherever they passed flames and ruins. It was now but too evident that the incendiaries acted upon some general design, and were directed by some vast combination. Alarm, terror, and consternation, became general; heightened by threatening letters, written and symbolical, dispersed by unknown hands.

Meanwhile the perpetrators escaped detection; the magistrates had been incessantly active, the people of the country had quitted their labours, and with the gens d'armes day and night patrolled the country. Representations were made to the Government, and regiments of the line were sent into Normandy, but they effected nothing. Several strangers under strong charges were arrested by the people themselves, but set loose by the police

without further enquiry. At length the Court of Caen assembled to investigate a vast body of judicial instructions, and matters collected by the magistrates, but justice was found to be paralysed by secret influences beyond the reach of detection.

These are all general facts of universal notoriety in Normandy. Now we proceed to others more special and of a singular character ; we shall, therefore, follow the course of judicial procedure.

Towards the end of May the incendiaries, having completed their task in Normandy, proceeded to the adjoining provinces.

Anjou became the chief scene of their devastations. They began, as before, by fires raised at distances in time and place, to mislead the people : in the month of June they grew more and more frequent, and in July the whole province became the theatre of a general and awful conflagration ; not a single day nor night passed over that did not add to the lists of crimes and ruins. Neither country nor villages nor even towns escaped the scourge.<sup>1</sup>

Alarm spread throughout, but the people, taught by the example of the Normans, were found better prepared. Fourteen persons were at length arrested as incendiaries, during the month of July, and carried to Angers, where they remained in prison until the 30th December last, when the assizes were opened for their trial.

<sup>1</sup> Charge of the Procureur-General of Angers, 30th Dec. 1830.

This event excited a deep and general interest : the court was crowded ; and Justice it was known would hold her even course.

One hundred and ninety witnesses were summoned to bear evidence, of whom thirty-five were adduced in proof of the general conspiracy, and one hundred and fifty-five as to particular facts.

The results of their evidence I have arranged under the following heads, in the words of the Judges, or of the witnesses themselves : —

1st, Of the general conspiracy.

“ In the month of July, when the three departments” (composing the province of Anjou) “ became the scene of these dreadful conflagrations, and the incendiaries drew near and nearer to this city, the Royal Court of Angers hastened to collect information of these crimes ; and in order to give more unity to their prosecutions, committed the office of Judges of Instruction to two of their members, who accomplished their task in its utmost extent, and to their labours we owe the means of conviction. The process-verbal drawn up, the informations taken, and the instructions collected by them, are the documents used in this present charge.

“ The first result of their labours has been the certainty acquired of a vast organised conspiracy to devastate the country under the jurisdiction of this court, the means employed form the first proof.

“ It has been seen that, in the greater number of cases, the fires burst forth towards mid-day, with a

report like that of a musket; jets of brilliant and diverging flame shot out; and when the conflagration broke forth, the whole building was in a moment enveloped in fire.

“ It is placed beyond a doubt that these fires were caused by a chemical preparation, and that this infernal composition possesses the peculiar property, whether of itself or by preparations to which it is subjected, to take fire at a certain known time, and under certain circumstances.

“ The results of the judicial investigations are confirmed by the declaration of four boys, of whom one adduced in evidence resides in the department of Mayenne, and the other three who followed the incendiaries were arrested, one near to Laval, the other near to Rosiers, and the last near Saumur.

“ Their declarations are, that the incendiaries commonly used balls of the size of hazel nuts; that these balls, when prepared, were kept constantly in water, that they might not catch fire; that to render them inflammable they were moistened with water, then coated with an unctuous matter of a grey colour; and that after they had been exposed to the air, within the twenty-four hours they caught fire of themselves.

“ On other occasions the witnesses have not heard any report; but then the progress of the fire was not so rapid. The smell of sulphur, of which some witnesses speak, leads to the belief that sulphur matches were used. Two of these boys

likewise attest that the incendiaries made use occasionally of sulphur matches.

“ Thus there exists an identity in the means employed by the incendiaries,—an identity remarkable, as this preparation is still a mystery ; and by this means the incendiaries could escape, and reach a distance before the fires burst forth.

“ 2dly, The second proof of a conspiracy is the sudden appearance of great numbers of persons, strangers in the country, in those places either fired or attempted to be fired. This general fact is fully proved by the instructions.” Then the Procurator-General adduces the proofs of this, which for brevity I omit.

“ In short, a great number of individuals, about the middle of July, were arrested, who had arrived in our departments, without any apparent motive, from the extremities of France, and of whom the greater number were furnished with passports from Paris. A great many of these have been condemned as vagabonds. The chief of these incendiaries was Francis Gualtier, who alone bore arms ; the sub-chief was Nirechien. The troop divided itself into bands of ten persons ; a woman and a child were attached to each band. By day they passed from farm to farm, and village to village, begging alms ; or as hawkers, generally, of little books or images. They had confederates in places known, who supplied them with food. As they passed they observed the localities, and at night made their report to their chief, who issued the

necessary orders. They slept in the woods, or between the ridges of corn ; and their rallying cry, to ears unaccustomed, could easily be confounded with the shepherd's call."

Then follows a vast body of evidence in proof of these facts.

" The first general fact has therefore been established so clearly, namely, the existence of a vast conspiracy to devastate by fire many parts of France, and amongst others the three departments under the jurisdiction of this court, that no single individual in possession of his senses can seriously doubt it. What is a conspiracy in the meaning of the law ? It is not only an association of criminals for some special criminal end,—a conspiracy, in the intent of the law, supposes a greater plan, and wider combinations, and to which we now proceed.

" The most frightful feature of this conspiracy is," continues this magistrate, " that what we have hitherto been investigating is no more than the ramification of a greater conspiracy of immense extent.

" It was not directed against the interests of individuals only, but involved vast political combinations. The magistrates, whom you have heard in evidence, have attested their firm belief in this ; and this court have unanimously declared the same opinion, that this conspiracy had a great political end. What its ultimate objects were remain a secret ; probably, by disorder and devastation to prove the apparent insufficiency of the laws and of



the magistrates, and under this pretext to found absolute power upon the ruins of our institutions, at least to create military courts and summary commissions, where suspicion holds the place of proof, and whose functions are limited to register the bloody decrees of power.

“ It is only through a veil that the eyes of the magistrates have been able to perceive the first and original authors of these horrid crimes. In the belief of one part of the magistrates, the authority instituted to protect the rights of all was the original author which prepared, ordained, paid, and enveloped in mystery, the crimes which have devastated our country. In the belief of the other part, these crimes originated with the council of Jesuits, with this occult government, which addressed, in the name of Heaven, a prince bred in prejudices, enfeebled by age, and dreaming, in 1830, of re-establishing antiquated power. This much is evident, that these crimes are the horrid machinations of men who have guaranteed, by religious oaths, the mystery in which they rest, and stifled in their adepts the fear of punishment by the reward of martyrdom.” But to proceed with the evidence : —

“ 1st, According to many documents collected in the Instruction, it is proved that in general the fires were not directed against the habitations nor the lives of the inhabitants, but against the farm-yards, the stables, and stacks of wood ; this the magistrates have found by inspection of the places. The intention of the incendiaries seems to have been to ex-

asperate the people by actual losses, and the fear of greater, rather than attack life. The incendiaries used to say, 'The people are too rich.' The boys who followed the troop attest that Gualtier and Nirechien, their chief and sub-chief, used to say 'that the French people are too rich,—we must burn to gain them over;' or, as one witness says, 'On mettait le feu pour gagner la France.' To understand this horrid principle, we have only to reflect that property is the parent of education, knowledge, and independence; as want is of dependence, ignorance, and superstition.

"2d, The incendiaries were evidently in the employ of persons in power. They had regular passports, with all the necessary means to assure them liberty of traversing the country. These passports were almost all dated at Paris, and there they returned when their work was done. In Paris also the fire-balls were fabricated, and thence they were sent in vases full of water, directed to the chief, who distributed them to his troop.

"3d, The evidence informs us, that the incendiaries received small salaries of five francs the day, more as encouragements than as rewards. That the money was paid to the captain of the troop by a great chief, whom they knew by the name of Monsieur Magnac, who again acted under a superior, unknown; that this Magnac resided in Paris; that the troop understood from their leader that the Government paid them; and that Monsieur Magnac was at the head of the Government; and

it was by the orders of Government that these fires were raised to prepare a revolution ; and that the largest sum their chief had at any time received was eighteen thousand francs. With this money their salaries were paid, and associates gained. One labourer, Bellanger, had twelve francs offered him to apply one fire-ball, which should act in half an hour. Another received 400 francs and a number of balls, to set fire to Pouance, but threw the balls away ;" and so of others.

" 4th, Among the incendiaries arrested is one Mercardier : he had resided seven years, from 1821 to 1828, in the Fraternity of L'Ecole-Chretienne in the Rue Saint Martin, Paris : his tone and language attest the truth of this assertion. When arrested he had a portfolio and three books, *Le Miroir des Ames*, *Le Chemin de la Croix*, and another in use in the Ecoles-Chretiennes, besides a chaplet. He had a passport for Nantes, and a certificate from two reverend father Jesuits. He stands charged with inciting the girl Chalau to become an incendiary, and the instigator of her first crime ; her second was committed, she asserts, by the orders of her confessor, the Curé of Chateaufneuf, ' to save her soul and please the King.' " Then follows the evidence in support of these facts.

" 5th, Of all the proofs of this vast conspiracy the most remarkable and conclusive is this, that the ordonnances of July were foretold by the incendiaries. An astonishing fact breaks forth — the great events in the end of July were predicted by

the incendiaries. The 20th July, one of the chiefs of the incendiaries said to the people of Rosiers, ‘ Vous montez la garde maintenant ; attendez huit jours, tous la monteront encore bien mieux. Canaille, vous ne rirez pas si bien les 27, 28, et 29 ; vous pleurerez, vous en verrez bien d’autres.’ Another said, ‘ Bientôt il se passera un coup de temps.’ A third, in quitting, at Rochelle, a young man, his associate, said to him, ‘ Le feu n’ira plus.’ In truth, the month of July had no sooner ended, than the fires ceased.”

But on a subject so strange we cannot be too particular ; I shall therefore quote the words of the witnesses themselves : —

Madame Petit de Jarze, witness.—“ In the month of July the burners came to the cottage of Metereau, a woodman, seeking a shelter for the night. They told him they were weary of their task, but before a month ‘ il se passerait un coup de temps,’ and that would end it. They added, that at the moment of this ‘ coup de temps, tous les hommes seraient à la messe, et que l’on jouerait des couteaux ; que beaucoup périraient, mais les autres auraient leur fortune faite.’ They added, that the following day Jarze would be burnt, which did happen accordingly.”

Antoine Metereau examined, confirmed the testimony of Madame Petit. He added, “ that the incendiaries threatened that in a month they should return and burn at will.”

Monsr. Robert, proprietor at Rosiers, depones, “ The police seeming powerless to arrest the incen-

diaries, we resolved to do that duty ourselves. Many incendiaries had been arrested by us and carried to Saumur; but as they were released without having been even interrogated, we decided to interrogate them ourselves. Gaultier (the chief of the troop) appeared at Rosiers as a journeyman shoemaker. As he had no certificate I caused him to be arrested, contrary to the advice of the then Procurator du Roi. When confronted with Bonnieres (a boy who followed the incendiaries), he stood astonished, seized his hair, and said, 'I am a lost man.' When arrested, on the 19th July, Gaultier threatened that a great event would happen before eight or ten days."

Le Sieur Moriceau depones, "that when Gaultier was arrested, he said, 'S—— canaille! vous riez maintenant; les 27, 28, et 29 Juillet vous pleurerez!'"

Le Sieur Diet depones, "as to the menaces of Gaultier of the 27th, 28th, and 29th July."

M. Fruhir des Rosiers depones, "that Gaultier, when arrested, said, 'Tas de canaille, avant peu de jours je serai libre, et vous paierez tout cela.'"

Monsr. Plumejean of Rosiers depones, "that he heard Gaultier say, upon arriving at the Daguenière, 'Le 27, le 28, et le 29, ne sont pas passés; avant dix jours vous me reverrez passer.'"

Monsr. Mercier of Rosiers depones, "that he was in the coach in which Gaultier was conveyed to Angers. Gaultier said to him, 'Tu te souviendras du 28 au 30.'"

Four other witnesses bear evidence that Gaultier used the same menace.

Two other witnesses depone : — Le Sieur Bry of Rosiers, “ that upon interrogating Bonnieres as to the motive of the incendiaries, he answered, ‘ Qu’on mettait le feu pour gagner le peuple, et que c’était la seule manière d’en avoir raison.’ ”

Mons. Cesbron, joint mayor of Rosiers, depones, “ that having interrogated Bonnieres as to the motive of the incendiaries, he answered, ‘ Qu’il fallait gagner le peuple ; qu’il était trop riche.’ ”

Lastly, Mons. Bore, Aide-de-Camp of the National Guard of Angers, who by his zeal and courage contributed much to the arrest of the incendiaries, depones, “ that upon arriving at Angers, Gaultier, in addressing the people who surrounded the coach, said, ‘ Canaille, avant dix jours vous en verrez bien d’autres.’ ” He frequently repeated to the witness, “ Vous croyez tenir quelque chose ; vous ne tenez rien ; quand vous m’arrêteriez, je serais relaché.” Bonnieres said likewise, “ Qu’avant peu il nous tomberait une bande d’incendiaires, dont nous ne pourrions nous défaire, quoique nous fassions bien rustiques.”

In fine, it is evident that a conspiracy existed of vast extent, designed for political ends ; that the incendiaries were suffered by the police to commit crimes with impunity, and were released so often as arrested by the people. It is also evident that these incendiaries were deep in the secrets of

Government. And that they knew not only its design in general, but the very day on which the ordinances of Charles X. were to be published. It is also evident that one great end of these horrid crimes was the destruction of property itself, to arrest the progress of independence and knowledge. Nor let it be thought that such crimes are rare, — all history is full of such examples. Let us but reflect that Ireland has suffered for centuries from the recurrence of similar outrages waged against property, without any visible end, save its wanton destruction.

Lastly, we come to a part of this momentous trial of deep interest to the reader. It appears that this conspiracy was not confined to France but embraced England too.

We have already seen that it was only through a veil that the eyes of the magistrates could perceive the first and original authors of these horrid crimes; and we cannot hope to find more proof as to England than has been found as to France. But as it may point the way to farther discoveries, I submit to the reader the little that is known of the extension of this conspiracy to our own land.

When the incendiaries were burning in Normandy, and it had become evident that the fires were the work of design, enquiry was busy as to their instigators. "At first the Insurance Companies were suspected, but they were soon ac-

quitted ; then the government were charged, and at length the English.”<sup>1</sup>

The Procureur-General in the audience of the 16th January said, “ It is pretended that Gaultier could not be the chief of the incendiaries, because he wanted money. In truth he affected poverty ; he said that black bread was sufficient for him, and that he had not two sous : but do we not know that the agents of this conspiracy received but little money and large promises ? ‘ it was in England that their fortune was to be assured.’ The witness Bonnieres, a boy of fourteen years of age, who had followed the incendiaries, depones, ‘ I have heard that it was the English who paid us, but that they gave little money at a time ; and it was said in the troop that our fortune would be made, when our “ mission ” was ended.’ In another place, the same witness explains himself more fully : ‘ The incendiaries received but little money, only earnest to encourage them ; but their mission ended, they were (the incendiaries said) to retire into England, where their fortune would be made.’ ”<sup>2</sup>

We have, therefore, this remarkable fact, that the incendiaries of France understood that their payment came from England, and that to England they were to proceed when their “ mission ” in France was terminated.

We have seen the singular precision and know-

<sup>1</sup> Evidence of M. de Fontette, Subst. du Procureur-General pres la Cour Royale de Caen.

<sup>2</sup> Charge of the Procureur-General.



ledge of the designs of their own government, that not only had they become acquainted with its general plan to re-establish absolute power, but with the very day on which the royal ordinances would be published.

We have likewise known by fatal experience that what they knew of their "mission" to England has since been completely fulfilled. We have seen, as in France, incendiaries traversing our counties, burning our farms, in many instances by chemical preparations, eluding for the most part the pursuits of justice, and evidently acting upon some organised plan, not referable to individual malevolence.

In France (as has been proved) the incendiaries formed part of a great political combination, directed by a chief unknown. And as England was comprised in this plan, there arises a strong judicial presumption, that as in France these crimes were perpetrated with a political end, so were they likewise in England.

In France, the incendiaries were the forerunners of the ordinances of July for the destruction of civil and religious liberty; "probably by disorder and devastation to prove the insufficiency of the laws and of the magistrates, and under this pretext to found absolute power upon the ruins of our civil institutions, at least to create *military courts* and summary commissions."

In like manner that the incendiaries of England were the forerunners of some deep and dangerous

design against the religion and constitution of the land is my entire conviction, grounded upon an infinity of circumstantial proofs.

Here I close this long digression. The sum of all is this, that the Romish priests are in character and in conduct the same at this day they were 400 years ago ; still perpetrating the same crimes to gain the same ends, which are what they have ever been, the upholding of despotism and superstition, inseparably united by bonds too strong for time to loose.

We now return to the subject of the county elections. The reader may remember by what frauds and crimes the statute of 1429 had been brought to pass, which disfranchised all electors in counties not possessed of freeholds of forty shillings yearly held of the King.

This statute has been confirmed by subsequent, almost in the same words, to the present time, and forms the basis of the modern parliamentary law regarding elections in counties.<sup>1</sup>

Here we should conclude this chapter upon the elective franchise in counties, but that the following observations may be of service to the reader :—

1st, We have seen that the statute of disfranchisement was gained by the priests to arrest the progress of the Reformation, and it served well its end ; for from the date of this statute<sup>2</sup>, 1429, until 1503, when the rolls of Parliament terminate, only three bills were passed by the Commons that reform

<sup>1</sup> Serjt. Heywood, on Elections, p. 23.

<sup>2</sup> Rolls of Parl. 1432, § 40. 45. ; and 1449, § 22.

any abuses in the Church. The last of these bills was, "that such of the clergy as have been convicted of murders, robberies, manslaughters, and thefts, and delivered by the civil judges to the ordinaries, may be kept safe by them, because the ordinaries commonly set them loose, when they returned to rob and murder more openly and audaciously than before."<sup>1</sup> The King's answer was, "That with the archbishops and bishops he will apply the remedy, reserving to the Church her freedom and liberties."

And so changed were the Commons in sense and spirit, that when the Duke of Gloucester charged the Cardinal of Winchester of high treason, the House of Commons, to screen him from justice, passed a bill, "making it illegal for the Cardinal to be prosecuted, sued, or tried by the King or his successors, or any others, for any offence against the Statute of Provisors, or for the admission and execution of any papal bulls, but that all his offences against these laws be discharged."<sup>2</sup>

The royal assent to this extraordinary law was in these words:—"Let it be granted to the Cardinal, and all acting under him."

In this manner the King and Parliament became a cat's paw to the Pope. Indeed it is most evident that but for this statute of disfranchisement and other artifices hereafter to be noticed, the Reformation must have been effected one whole century earlier than it was.

<sup>1</sup> Rolls of Parl. 27 Hen. 6. § 22.

<sup>2</sup> Id. 1432, § 16.

2d, The measures of the Commons to reform the abuses of the Church were in general favourable to the resident parochial clergy; and it is highly probable that among this class of men the desire of reform was gaining ground, and had now become general; because from the reign of Henry VI. and so downwards, the parochial clergy appeared seldom, if at all, in Parliament, where they were summoned by their bishops, as has been shown to have been the custom.<sup>1</sup>

3d, The statute of disfranchisement not only reduced the numbers of voters, but made them more dependent too; for now the election being exclusively confined to the King's freeholders, they began to be subjected to those vexatious suits regarding the tenure of their lands, by the Chancery, the Exchequer, and the Sheriffs, which throughout this reign the House of Commons unceasingly complain of as contrary to law, but in vain.<sup>2</sup>

Another object was gained: by this law of disfranchisement were precluded those popular and frequent elections, where the thousands who assembled discussed with freedom, and spread rapidly the doctrines of the new faith, destined at a distant day to become a shield for our liberties, perhaps to civilise the world.

4th, It is observable, that from this period the subsidies granted become heavier, and the votes of

<sup>1</sup> Hody's Hist. of Conv. part ii. p. 426.

<sup>2</sup> See the Rolls of this reign, *passim*.

credit to ministers more frequent, and for greater sums than before.

This is but one of innumerable proofs of that principle drawn from the conduct of our Parliaments, that the fewer the House of Commons represent, the more lavish they become.

5th, The reader must have remarked, that, with very few exceptions, the great measures of reform were all commenced by the Commons, and few or none by the Lords. But he must not therefore conclude that the Peers were opposed or indifferent to reform; because, by the custom of Parliament in those times, bills for the redress of general grievances began in the House of Commons; and with much reason, for, as the learned Sir Robert Cotton observes, "The Commons being most in number, and in most places of the land, are likely to take most notice of those things that need to be provided for, and being weak in power, are most subjected to feel inconveniences and grievances."<sup>1</sup>

Lastly, From this period, when our Parliaments became subjected to the priests, we see all things run to ruin. The public revenue sunk so low, that the subsidies were granted "under exemptions to cities and towns wasted and unable to pay their wonted shares."<sup>2</sup>

Embezzlement of the Customs became general<sup>3</sup>,

<sup>1</sup> On the Jurisd. of Parliament, MS. Brit. Mus. p. 107. No. 225. Harg. Coll.

<sup>2</sup> Rolls of Parl. 14 Hen. 6. § 13. 15 Hen. 6. § 23. 18 Hen. 6. § 12., and the following throughout this reign.

<sup>3</sup> 11 & 12 Hen. 6. § 23, 24, 25.

and the manufactures, especially of woollens, were ruined.<sup>1</sup>

The jurisdictions of the courts of common law were encroached upon by the Chancery, where a priest presided, and endless extortions followed.<sup>2</sup> The sheriffs received grants of their offices for life, and became the mere tools of ministers; they transmitted the precepts for elections to the cities and boroughs, or withheld them, as served their ends, or returned persons by false indentures, who never had been elected at all.<sup>3</sup> Even the justices of the peace were commissioned from mean persons of no estate.<sup>4</sup> From these disorders sprung opposition to the laws, and especially to the statutes forged against the Reformers. Opposition grew to insurrections; and these to civil war, the longest and bloodiest that England had ever suffered.

<sup>1</sup> Rolls of Parl. of Edw. 4.

<sup>3</sup> Id. 23 Hen. 6. § 35. 39. 48.

<sup>2</sup> Id. of 1433, § 57.

<sup>4</sup> Id. 18 Hen. 6. § 13.

## CHAP. III.

## OF THE REPRESENTATION OF BOROUGHES.

**H**AVING in the former chapters entered fully into the history of the principles and practices of the ancient Parliaments, our task becomes the lighter now. In the present we shall as before follow the order of time, by relating briefly the ancient laws and practices in the Representation of Towns until the reign of Henry VI.; and, 2dly, The changes and abuses those laws and practices have since undergone.

But, before we proceed, some introductory observations are needful, to the right understanding of what follows.

1st, Of the word Borough.

“Burh, or Burgh, or Ceaster, were the English or Anglo-Saxon names for a city or town; thus London, Canterbury and Rome were called by the Anglo-Saxons burghs.

“Cities have been styled in our records either *civitas*, or *villa* or *villata*, or *burgus*. Towns and boroughs, either *burgum* or *burgus*, or *villa* or *villata* indifferently.

“In conformity, the men or inhabitants, either of a city or town, were commonly called by the

Anglo-Saxons burg-were-men, or burgesses of such a place; the citizens of a city either cives, homines, or burgenses; and the men of a borough either homines or burgenses. Thus in the reign of Henry I. the citizens of London are styled burgenses Londoniæ, and homines Londoniæ.”<sup>1</sup>

2dly, Of corporate towns.

“The notions,” observes Mr. Madox, “which, at this day, men generally entertain concerning them, are so different from the notions that our ancestors have had, that it may be worth the while to enquire into the true state of that matter.”<sup>2</sup> These false notions are of several sorts.

1st, Of the names or styles of towns corporate.

“In former times, incorporated cities, towns, and boroughs had no certain or fixed name or style, but any name was used by which they could be known or distinguished. And the same latitude was used in towns corporate as in those not corporate.”<sup>3</sup>

Thus in the statute of 1 Edward IV., confirmed by the statute 7 & 8 Edward IV., and by the 1st of Henry VII., the several names of “persons corporate,” used until that time, are minutely specified, and are of great variety: as, “The mayors, sheriffs, and citizens;” “The mayor, bailiffs, and commonalty;” “The mayor, burgesses, and commonalty;” “The citizens, burgesses, and commonalty;” “The citizens and commonalty, their heirs and successors;” “The men and burgesses,

<sup>1</sup> Madox, *Firma Burgi*, pp. 2. 115.    <sup>2</sup> *Id.*, p. 1.    <sup>3</sup> *Id.*, p. 115.



their heirs and successors;" "The tenants and inhabitants, their heirs and successors;" "The burgesses, inhabitants, and residents, their heirs and successors."<sup>1</sup>

These statutes were enacted in confirmation of the rights, liberties, and franchises of the towns of England. Their words are, "And to other persons corporate before specified, and to every of them, by whatsoever name or names they or any of them be corporate, or in the said grants be named, are now confirmed."

2d, Of the differences between towns corporate and not corporate.

"Although the corporation fitted the townsmen for a stricter union among themselves, for a more orderly government, and for a more advantageous exercise of commerce<sup>2</sup>;" — "yet in ancient times little difference was made between a populous town that was incorporated, and one that was not incorporated; as to perpetual succession, as to holding their town at ferme, and as to paying their aids, tallages, fines, and amercements."<sup>3</sup>

"Thus a town not corporate might be a community in perpetual succession, as well as a corporate town; a town, as long as it continued inhabited, had a succession; and when a town happened to be entirely destroyed and dispeopled, then its succession was at an end, whether it was corporate or not

<sup>1</sup> Rolls of Parl. 1 Edw. 4. § 41. b. Id. 7 & 8 Edw. 4. § 7., and id. 1 Hen. 7. 1485.

<sup>2</sup> Firma Burgi, p. 296.

<sup>3</sup> Id. p. 37.

corporate.”<sup>1</sup>—“ In early times the grants made to incorporate towns were commonly made to them and their heirs. So also in the same ages the grants made to towns or aggregate bodies of men not incorporated, were usually made to them and their heirs.”<sup>2</sup>

In like manner towns not corporate could sue and be sued, and of this numberless instances are found<sup>3</sup>: “ they were charged with aids and tallages, in the same manner and method as towns corporate without any discernible difference.<sup>4</sup> And their common duties, or prestations, were paid by collections or contributions made among the townsmen, whether the town was incorporated or not.”<sup>5</sup>

3d, Of the antiquity of corporations created by royal charters.

“ Anciently a gild or corporate body was not legally set up without the King’s licence. These gilds were of several trades; as of goldsmiths, glovers, &c.<sup>6</sup> Perhaps from these gilds, or in imitation of them, sprang the method or practice of gildating or embodying whole towns. The ancient Kings of England, in their charters or letters patent, did many times grant to the men of a town or borough, among other franchises, that they should have a merchant’s gild.<sup>7</sup>

“ A great while after the reigns of the ancient kings just now mentioned, to wit, in or near about the reign of Henry VI., the kings began to use

<sup>1</sup> Firma Burgi, pp. 37. 50.

<sup>2</sup> Id. pp. 43, 44, 45.

<sup>3</sup> Id. pp. 65—86.

<sup>4</sup> Id. pp. 58—61.

<sup>5</sup> Id. p. 280.

<sup>6</sup> Id. p. 26.

<sup>7</sup> Id. p. 28.

other terms in their charters, or letters patent of grants or franchises. They granted to the men of a borough or town that they should be a ‘*communitas perpetua et corporata*,’ a corporate and perpetual community.

“ Thus Henry VI. by his charter granted to the inhabitants of Southampton and their successors that their town should be a perpetual corporate community. King Edward IV. granted by his charter to his burgesses of Colchester that their town should be a ‘*corpus perpetuum*,’ and a ‘*communitas corporata*.’ He also granted by his charter to the men and residents of Wenlock that they should be a ‘*liber burgus in perpetuum incorporatus*.’ ”<sup>1</sup>

“ In the next following or modern times they used to grant them to the men of a town or borough ; that they should be ‘*corpus corporatum et politicum*,’ a corporate and political body. This is a thing well known and needeth no proof. Thus the terms incorporating and corporation came in.”<sup>2</sup>

4th, There is a prevalent notion that the elective right in towns is connected with or dependent upon their incorporations ; and from this notion, palmed by the interest of a few upon the ignorance of the many, important consequences have been drawn.

But, 1st, We have just seen that the incorporations of towns as a political body, or a “ perpetual and corporate community,” contradistinguished from their ancient and simple forms of magistracy, was an invention of Henry VIth’s

<sup>1</sup> 8 Edw. 4. M. 11.

<sup>2</sup> Firma Burgi, p. 29.

reign, and the writs for election and their returns are extant upon record from Edward I.'s reign, and were once to a much earlier date, though since lost, as has been already proved. So that the representation of towns preceded by 200 years the invention of incorporations.<sup>1</sup>

2d, Neither is there now any necessary connection between them. For of the boroughs which at present return members, there are fifty-six which neither are nor ever were incorporated under any style or form whatsoever; and of these thirty-three are ancient boroughs by prescription, that is, they have possessed the elective franchise from the earliest ages.<sup>2</sup>

3d, In some boroughs their corporations have been dissolved naturally, by death, in others by the decisions of courts of law, yet the elective franchise continues to be exercised as before.<sup>3</sup> In others, the election vested by charter solely in the corporation, and which had been declared to be an illegal monopoly, is now possessed by the inhabitants.<sup>4</sup>

In fine, it is most evident that the right of representation is wholly independent and separate from corporate rights, differing in their origin, in their nature, and in their ends.

But to clear up this matter yet further, I beg

<sup>1</sup> Calendar of Writs.

<sup>2</sup> Oldfield's Hist. of Boroughs, part ii. vols. i. ii. iii. Notitia Parl. vol. i. pp. 1—70.

<sup>3</sup> Id. ib.

<sup>4</sup> Journals of the House of Commons, vol. i. p. 708. Glanville's Rep. p. 18.

leave to quote the following passage from a contemporary of real learning<sup>1</sup>: — “ All the abuses arising from the too limited and too extended number of corporators, and of non-residents, are attributable to one error, which has been adopted by the House of Commons and its committees, — that the right of election is in any respect a corporate right. I venture to call this an error, because it can be proved to be absolutely impossible. The greater number of boroughs have returned members from the close of Edward I.’s reign down to the present time.

“ Though ecclesiastical and eleemosynary corporations and guilds (which latter were bodies separate and distinct from burgesses) have existed from time immemorial, yet there were no municipal corporations in this country before 1440, the 18 Henry VI., when the first charter of incorporation was granted to Kingston-upon-Hull.

None of those charters which precede it on the Rolls have any words of incorporation; but that charter contains nearly the same words of incorporation which are used at this day, and which had before that time been adopted in grants to ecclesiastical bodies, as abbeys, priories, convents, &c.; to eleemosynary bodies, as hospitals; and to guilds; but had not been applied to municipal bodies till the time of Henry VI. This

<sup>1</sup> Sergt. Merewether’s Address to the King, Lords, and Commons, pp. 33—36.

fact can be proved without the chance of contradiction.

“ Municipal corporations are neither mentioned in our Saxon laws, our old text authors, nor in the commencement of the Year Books, which are our earliest legal authorities. And the whole of our corporation law until the reign of Henry IV. is solely and exclusively confined to corporations of the sorts I have enumerated ; a circumstance easily explained, because those bodies acted chiefly upon the civil law, from whence we borrow the rules and principles which we apply to corporations ; but which were at that time of day not adopted in our legal system, except for the limited purposes already mentioned.

“ About the time of Henry IV., although the inhabitants of many towns and other local districts had immemorially enjoyed privileges and grants without being incorporated (as is abundantly established by Madox on undoubted evidence), yet the ecclesiastics, resting themselves upon the principles borrowed from the civil law, began to dispute the right of the lay municipal bodies to enjoy privileges interfering with their own, without their being duly incorporated. These discussions, it appears from the Year Books, continued for a long period, and at length produced, as I conceive, the charter of Kingston, to which I have before alluded.

“ It may therefore be assumed as a certain fact, that municipal corporations not existing till the

reign of Henry VI. could not be connected with the right of representation, which began as early as the reign of Edward I., and was in continued practice afterwards.

“ This fact ought to be decisive upon the point. But in farther confirmation it may be added, that there are many incorporated places which do not return members to Parliament ; that many places return members which are not incorporated ; that there are others incorporated which return members, but where the corporators do not vote ; and there are places also which have been incorporated : where the corporate offices have interfered in the election, the corporators and the officers have ceased by the dissolution of the corporate body ; and yet those places have continued to return members to Parliament.

“ There is not, therefore, a point which can be more clear, than that the return of members to Parliament is in no respect a corporate act.”

In fine, the priests having disfranchised the counties, began to put in practice their long designed plans for disfranchising the towns.<sup>1</sup> How far they succeeded, and by what artifices (to which these newly invented corporations formed a main help<sup>2</sup>), shall be related in a subsequent part of this chapter.

5th, Another error, though less dangerous, has been held regarding the representation of towns, —

<sup>1</sup> Statute of 1429.

<sup>2</sup> First incorporation in 1440.

that they were summoned solely for the granting of subsidies, but that they shared not in the enactment of laws.

How this notion was taken up is hard to conjecture, being disproved by every page of the rolls of Parliament, and even by the very words of writs; as for example, the writs for summoning a Parliament, the 21 Edward III. contains the following clause: — “ We will you to know that the said Parliament is not summoned to request aids or tallages of the people of this kingdom, nor to impose other burdens upon them, but solely for the ends of justice, and for alleviating the losses and grievances of our people.”<sup>1</sup> And a similar clause occurs in the writs for the thirty-seventh of the same reign.

Lastly, We have seen that before the invention of these town incorporations many of the ancient cities and towns of England had for immemorial ages possessed municipal governments, rights, franchises, and privileges, to elect their own magistrates, to enact their own peculiar laws, and to tax themselves for their own particular ends.

There is a prevalent belief even among the learned, that these rights originated in ancient grants of our kings, because in all ages the powers of “ directive justice,” to use an expression of Sir Mathew Hale, has formed a necessary branch of the prerogative<sup>2</sup>, and because, in fact, many privi-

<sup>1</sup> Rot. Claus. 21 Edw. 3. p. 2. M. 9 d.

<sup>2</sup> Prerogativa Regis. MS. Brit. Mus.



leges possessed by towns do owe their origin to royal grants, made to amend their condition in jurisdiction or trade.<sup>1</sup>

But that the municipal governments and privileges of our most ancient towns owed their beginnings to the grants of our kings, is impossible; because those towns had been founded and established for centuries before the Norman or even the Saxon conquests.

This is no place for antiquarian discussions; but as many ill consequences have been drawn against the representation of towns from false notions of their origin, a few observations may be allowed.

The reader need not be reminded that England, after a long and bloody contest, became a province of the Roman empire, and, like her other provinces, was colonised; that the colonies of ancient Rome possessed forms of government, with rights and privileges peculiar to themselves, according to their respective ranks, modelled more or less after their parent city, of which they were the minatures.

We are informed that Britain, under the Romans, possessed ninety-two cities, of which thirty-three were celebrated and conspicuous.<sup>2</sup> Of these the most considerable were London, called afterwards Augusta<sup>3</sup>, the capital, Sandwich, the chief seaport of the Romans, its harbour being then deep, spacious, and secure, St. Alban's, Colchester, Salisbury, Southampton, Winchester, Canterbury, Bath, Ex-

<sup>1</sup> Firma Burgi, pp. 242. 280.

<sup>2</sup> Ricardus Corinensis.

<sup>3</sup> Britannia Romana.

eter, Gloucester, Chester, Lincoln, York, and Carlisle.<sup>1</sup>

Of London Tacitus thus speaks, in the 61st year of Christ:<sup>2</sup> — “ At Suetonius mirâ constantiâ medios inter hostes Londinium perrexit, cognomento quidem coloniæ non insigne sed copia negotiatorum et commeatum maxime celebre.”<sup>3</sup> And he adds, that in this rebellion there were slaughtered in London and in Verulam “ ad septuaginta millia civium et sociorum iis quæ memoravi locis, cecidisse constitit.”

As London continued the capital of the Roman empire in Britain for almost 400 years, the seat of its government, the point where began all its great military ways, the centre of its commerce, and colonised by a people highly civilised; who, with common sense, would believe that this city remained without municipal government or laws?

Indeed, whoever will apply himself to study the ancient cities of England, in their sites, antiquities, their ancient forms of government, the names and duties of their officers, the forms of their election, their courts, procedure, and privileges, will observe such coincidences with the jurisprudence of Rome, as to lead him to the conclusion, that from this high parentage the cities of England derive their ancient rights.

We now proceed to the history of the representation of towns until the reign of Henry VI.

<sup>1</sup> Ricardus Corinensis.

<sup>2</sup> Britannia Romana.

<sup>3</sup> Annals, lib. xiv. c. 33.

### I. Of the places represented.

1st, As the incorporation of towns was a device of Henry VI.'s reign subsequent to the period now treated of, so this consideration may be entirely laid aside.

2d, Neither does the tenure of towns present any difficulty, for many towns were held of the Crown<sup>1</sup>, sometimes antiquo juræ coronæ, sometimes by other titles, and continue so still<sup>2</sup>, and others were held, and still hold, of subjects<sup>3</sup>; yet this affected not their elective rights, for both were summoned to Parliament, the one as the other, without distinction of tenure.<sup>4</sup> Thus the order for assessing the subsidy granted upon confirmation of the Great Charter, the 30th July, 1297, recites, "That the earls, barons, knights, and other persons of the laity had given an eighth, and that the citizens, burgesses, and worthy men of all and singular the cities and boroughs of the kingdom, of whatsoever tenure or liberty, 'de quorumcunque tenures aut libertatibus fuerint,' and also the King's demesnes, had granted a fifth of their movables."<sup>5</sup> Nor in after times did the laws and customs of England change, representation being a right altogether independent of tenure.<sup>6</sup>

3d, What has been so often insisted upon, and proved by so many documents, may here be repeated, "That no one class of freemen could by

<sup>1</sup> Firma Burgi pp. 4, 5. 7.

<sup>2</sup> Id. p. 4.

<sup>3</sup> Pat. Rolls, 25 Edw. 1.

<sup>4</sup> Id. p. 12.

<sup>5</sup> Notitia Parl. passim.

<sup>6</sup> Notitia Parl. passim.

right, or did in fact pretend to impose taxes upon those classes to which they themselves did not belong."

This was the ancient principle of the Constitution, and is so declared by many statutes, of which the following may be taken as examples:—

"Forasmuch as divers people of our realm are in fear that the aids and taskes which they have given to us beforetime towards our wars and other business, of ther own grant and good will (howsoever they were made) might turn to a bondage to them and their heirs, because they might be at another time found on the rolls, and likewise for the preses taken throughtout the realm by our ministers: We have granted for us and our heirs, that we shall not draw such aids, taskes, nor preses, into a custom, for any thing that hath been done heretofore, be it by roll or any other precedent that may be found.

"Moreover, we have granted to us and our heirs, as well as to archbishops, bishops, priors, and other folk of the Holy Church, as also to earls, barons, and to all the commonalty of the land, that for no business from henceforth we shall take such manner of aids, taskes, nor preses, but by the common consent of the realm, and for the common profit thereof, saving the ancient aids and preses due and accustomed."<sup>1</sup>

But as even this statute did not give entire satisfaction, the celebrated Statute de Tallagio non

<sup>1</sup> 25 Edw. 1. 1297. Confirmation of Magna Charta. Statutes of the Realm.

Concedendo was enacted, in these words: — “ No talliage or aid shall be taken or levied by us or our heirs, in this realm, without the good will and assent of archbishops, bishops, earls, barons, knights, burgesses, and other freemen of the land. No officer of ours, or of our heirs, shall take corn, cattle, or any other goods, of any manner of person, without the good will and assent of the party to whom the goods belong.” — “ And if any statutes have been made by us or our ancestors, or any customs brought in contrary to them, or in any manner of article contained in this present Charter, we will and grant that such statutes and customs shall be void and frustrate for evermore.”<sup>1</sup>

“ This seems,” says Blackstone, “ to have been the final and complete establishment of the two Charters of Liberties and of the Forrests, which, from their concession, in 1215, had been often endangered, and undergone many mutations; but were now fixed upon an eternal basis, having in all, before and since this time, been confirmed and commanded to be put in execution by thirty-two acts of Parliament.”<sup>2</sup> I need not remind the reader that this statute remains in force as the existing law of the land.

As the people were protected against direct taxation, so were they likewise against indirect. Mr. Hakewell, in his *History of Impositions*, assures us, “ That from the Conquest until the reign of

<sup>1</sup> 25 Edw. 1. 1297. Statute of the Realm.

<sup>2</sup> *History of the Charters of Liberties*, p. 352.

Queen Mary there were a succession of twenty-two kings, by all of whom not more than six impositions, such as can be complained of as against law, were ever levied, as far as can be discovered from records, and these moderate and of short duration.”<sup>1</sup>

And he further adds, — “ There is no statute nor record, from Edward III. till Queen Mary’s reign, that giveth any assurance that so much as one imposition was laid during all the space of about 170 years. This is said upon a laborious search into the ancient custom-books of these times.”<sup>2</sup> And he sums up his History of Impositions in these words : — “ Neither the necessity of just and honourable war, nor the subtleties of peace, nor the prodigality of some of those kings for the better satisfying of their pleasures, nor the covetousness of others, nor their non-age, apt to be abused, nor the dreadful and fearful awe in which some of them held their subjects, nor any other motive whatsoever which happened during this long time, could revive them, until Queen Mary did at last raise them out of their grave, after they had for so many years been dead and rotten.”

And as it is evident from these statutes that the King could not legally impose taxes upon the subject without the consent of Parliament, neither did the Parliament itself possess unlimited powers of

<sup>1</sup> Hakewell’s Hist. of Impositions, pp. 35, 36. ; see also 45 Edw. 3. c. 4., and 11 Ric. 2. c. 9.

<sup>2</sup> Hakewell’s Hist. of Impositions, pp. 79. and 93.

taxation. Sir Robert Cotton explains their powers thus:—"Upon the junction of the minor barons and the burgesses into one House, they fell into a new way of taxing, which was by way of subsidy, as the tenth penny of every man's substance, which they called Dismes, and the fifteenth penny, which they called Quinsimes. These were raised by particular laws, and were gathered by distress, according to the value of every man's personal substance. But because the Commons, sitting by right of representation, could give no more than they were empowered by their principals, therefore all taxation used to begin in their House, neither would they suffer it to be altered, because they looked upon that to be a breach of trust in not conforming to their original instructions.

"This seemed to be taken from the customes of the ancient boroughs, who were instructed to give a particular sum for every particular borough; and they did not immediately leave that way of taxing; and afterwards, when they came into a more general way of taxing by tenths and fifteenths, they used to consult their principals, as they had formerly done, what they would bear; and when once by consultation together they had formed one general subsidy, they would never suffer it to be touched by the superior baronage."<sup>1</sup>

Nor let it be imagined that this conformity to the

<sup>1</sup> MS. Brit. Mus. No. 227. Harg. Coll. pp. 226, 227. on the Juris. of Parl.; see also Rolls of Parl. 13 Edw. 3. § 8., and the Petition of Right, 1 James I.

constituent's will proceeded from ignorance of that general principle of parliamentary law, "that every member, though chosen for one particular district or place, when elected, serves for the whole realm, because he is not barely to advantage his constituents, but the Commonwealth."<sup>1</sup>

This has in all ages been an acknowledged principle; but in those times of which we now treat it was limited to the enactment of laws, and not applied to the granting of money, which was a free-will gift of the subject, which had nothing of the forms nor of the nature of laws: and such is the true meaning of the principle still; for it is declared, "That all money aids and taxes to be raised or charged upon the subjects in Parliament are the gift and grant of the Commons in Parliament, and presented by the Commons in Parliament, and are, and always have been, and ought to be, by the constitution and ancient course and laws of Parliament, and by the ancient and undoubted rights of the Commons of England, the sole and entire gift, grant, and present of the Commons in Parliament."<sup>2</sup>

The ancient principles and forms of taxation once known, will facilitate the understanding of what follows.

The writs of elections are not extant as a series earlier than the reign of Edward I., and those imperfect.

They are similar in their style and words: they

<sup>1</sup> Blackstone, vol. i. p. 159.

<sup>2</sup> Poll Bill in 1689. Commons' Journals, vol. x. p. 134.



command the sheriffs to issue precepts for elections "to every city and to every borough within their respective shires, that each city may elect two citizens, and each borough two burgesses, with power to consent for themselves and for the communities of those cities and boroughs, to such things as shall be propounded and treated of in Parliament."<sup>1</sup>

It cannot be doubted that the order to direct a precept to "every city and borough" was according to the common law, because these writs are of high antiquity, uniform in their tenure, considering their vast numbers rarely varied, and claimed by the Parliaments of all ages as the common right of the realm.

And records inform us, that in Parliaments assembled for matters of deep interest, as that of 25 Edward I. in 1297, when the Great Charters were solemnly confirmed, that citizens from each city, and burgesses from each borough, did so assemble.

The subsidy granted in this Parliament was<sup>2</sup>, "By the earls, barons, knights, and other persons of the laity, and by the citizens, burgesses, and worthy men of all and singular the cities and boroughs of the kingdom, of whatsoever tenure or liberty they were."<sup>3</sup>

The conclusion, therefore, seems justly drawn by

<sup>1</sup> Parliamentary Writs, *passim*.

<sup>2</sup> Pat. Rolls of 25 Edw. I. Petyt's Rights of the Commons, pp. 172. 177.

<sup>3</sup> See many other instances in the Parl. Writs.

an historian, deeply read in ancient documents, that, "Since there is no charter existing, and none has been shown to exist that confers the right of election on any of the ancient boroughs, it seems to show, that it was the immemorial right of all cities and boroughs, beginning with their existence and constitutionally attached to it, and not flowing from any specific grant."<sup>1</sup>

In none of the records has any express clause been found that entitles or imprivileges any borough to send members to Parliament, until the 8th of Edward IV., who, by his charter to Wenlock, in Shropshire, dated 29th November, 1478, specially empowered it to send one burgess to Parliament; "which is the first precedent I meet with," says Willis, "inserted in the charter of any borough."<sup>2</sup>

That the cities and boroughs sent members to Parliament as an ancient common right is evident from records: thus, in the 51 Edward III. the House of Commons passed a bill in the following words: — "By common right of the realm of each county of England there are and shall be elected two persons to be in Parliament for the commons of the said counties, except for prelates, dukes, counts, barons, and such as hold by barony, and who are and shall be summoned by brief, and except cities and boroughs who ought to elect of themselves, who ought to answer for them."<sup>3</sup>

<sup>1</sup> Turner's Hist. of the Anglo-Saxons, vol. iii. pp. 218. 240.

<sup>2</sup> Notitia Parl. pp. 39. 43.

<sup>3</sup> Rolls of Parl 51 Edw. 3. § 45.

Thus the statute of 5 Richard II., for the enforcing the attendance of Lords and Commons in Parliament, enacts, " And if any sheriff shall be negligent in making returns of writs of Parliament, or shall leave out of the said returns any cities or boroughs, which are held and of ancient times accustomed to come to Parliament, he shall be punished in manner as has been accustomed in like case in ancient times."<sup>1</sup>

Thus the statute of 2 Henry V., already noticed, to prevent the forgery of statutes, declares, " That it hath ever been the liberty and freedom of the members that come from the commons of your land, that there should no statute or law be made unless they gave thereto their assent, considering that the commons of the land, the which that is and ever hath been a member of the Parliament, be as well assenters as petitioners."<sup>2</sup>

And in the 8 Henry VI. the Commons passed a bill for the more regular payment of the wages of members for cities and boroughs, with the following preamble:—" That as the citizens and burgesses elected to come to Parliament, by the elections of the people of cities and boroughs within the realm have had, and of ancient times accustomed of right to have, for their wages and expenses of each member, for each day while the Parliament lasts, two shillings, that is, two shillings for each day during the Parliament; which wages the said citizens and

<sup>1</sup> Rolls of Parl. 5 Ric. 2. § 16. In 1382.

<sup>2</sup> Rolls of Parl. 2 Hen. 5. § 22. In 1414.

burgesses, and each of them, from ancient times have had, and of right ought to have, their writ to the sheriffs of the counties where such cities and boroughs are, to levy and deliver to them the said wages, in like manner as the knights for counties coming to Parliament have had and used.<sup>1</sup>”

Again, in the exercise of these rights we see that from the earliest times in which the Parliamentary Records have been preserved, the same writs that summon the knights for counties summon also the citizens for cities, and burgesses for boroughs, in terms similar and for the same ends.<sup>2</sup> We see their returns made by the sheriffs, and the elections oftentimes (especially for the smaller boroughs) made in the county courts.

If to these facts be added the express words of the Statute de Tallagio, declaratory of the ancient law, with the principles and forms of taxation, and the total absence of any charter, grant, or privilege, to any city or borough, to empower it to send representatives to Parliament, until the charter to Wenlock in the year 1478, it becomes evident that the right of towns to be represented in Parliament was an ancient common right of the realm.

Next we shall consider in what manner this right was exercised, and by what circumstances modified.

From the loss of the writs and returns no lists of the cities and boroughs summoned to Parliaments can be made out that shall be perfectly correct ;

<sup>1</sup> Rolls of Parl. 8 Hen. 6. § 41.

<sup>2</sup> Parliamentary Writs, *passim*.

neither of such as made actual returns, nor of such as neglected or declined to do so; nor yet of such as having occasionally sent members then ceased for the future.<sup>1</sup> But so far as records are known, and enough are yet extant to bring us near to the truth, the greatest number of cities and boroughs summoned from the beginning of Edward I.'s reign until that of Henry VI. did not exceed 170 in all.<sup>2</sup>

Of these some small and poor boroughs, upon the receipt of their precept, neglected or declined to make any election or return, conceiving that they were not bound by reason of their poverty. Some again made election once and then ceased, others twice, others thrice, others four or five times, then declined to return any more.<sup>3</sup>

Again, there were boroughs richer and better inhabited, which continued throughout entire reigns to send their representatives, but falling to decay, were exempted from inability.<sup>4</sup>

In this manner these poor towns, as they ceased to return, so the sheriffs of themselves no longer continued to send them precepts for elections; and thus one by one they dropped out of the number of parliamentary boroughs.

Another cause of irregularity in the numbers of these boroughs was the power exercised by sheriffs in virtue of that general clause in the writs, to direct precepts for elections "to every city and to

<sup>1</sup> Parliamentary Writs, *passim*.

<sup>2</sup> Brevia Parl. Red. pp. 224, 225.

<sup>3</sup> Id. pp. 225—228., and Notitia Parl. vol. i. pp. 8—14. and vol. iii. p. 102.

<sup>4</sup> Id. *ib*.

every borough within their respective shires ;” for sometimes they issued precepts to more, at other times to fewer towns, frequently justified by their condition, but sometimes illegally, as appears by the statutes to correct them.

The returns made by the sheriffs to Chancery, of such a borough, “that no return was made from that borough,” or, “that no answer was given,” or, “that the precepts had been transmitted, but the burgesses would not make any election ;” and frequently the sheriffs say in general, “there are not any other cities or boroughs within the county, from which any citizen or burgess ought or are wont to be sent to Parliament on account of their weakness and poverty.”<sup>1</sup>

But if any borough in real indigence and inability to bear the charge and wages of a representative continued to be summoned by the sheriffs from any unjustifiable motive, their remedy was, as appears at common law, in the form of a petition to the King, who ordered the cause to be tried, as was done for the borough of Torinton, 42 Edward III., and letters patent of exemption issued accordingly.<sup>2</sup>

In like manner, if from any illegal cause the sheriff withheld a precept for election, due by law, and demanded by the inhabitants, their cause was tried at common law, as was done upon the claim of St. Alban’s, 8 Edward II., “to send two

<sup>1</sup> Parliamentary Writs, *passim*.

<sup>2</sup> Notitia Parl. vol. ii. p. 244., and vol. i. p. 39. Brevia Parl. Red. p. 233.

burgesses to all Parliaments, as they had been wont to do in all times past, in the reign of Edward I. and his progenitors, constantly until the present Parliament, in like manner as the other burgesses of the realm." They then state, "that the sheriff of Hertford, at the procuration of the Abbot of St. Alban's and his council, refused the burgesses their precept for election, or to return their names, as of duty he ought."<sup>1</sup>

The answer to this petition was, "Let the rolls of Chancery be searched, whether they were accustomed to come or not, and let justice be done accordingly."

Again, when precepts were issued to boroughs, not the first time, which had not elected or returned before, it was done by virtue of the words of the writ by the sheriff himself, from the mere force of the common law. Of this there are many instances in the reigns of Edward II. and Edward III., although, as has been already said, their precise numbers cannot be stated with certainty.<sup>2</sup>

These changes, whether by additions or exemptions in the number of towns represented, appear to have preceded the middle of Edward III.'s reign<sup>3</sup>, and by the statute of 5 Richard II. c. 4. declaratory of the common law, sheriffs were forbidden to leave out cities or boroughs, which of old

<sup>1</sup> Rolls of Parl. 8 Edw. 2. Petyt's Rights of the Commons, pp. 7, 8.

<sup>2</sup> Brevia Parl. Red. pp. 225, 226, 227.

<sup>3</sup> Id. pp. 227, 228., and Notitia Parl. p. 39.

were wont to come to Parliament under the penalties accustomed.<sup>1</sup>

From the reign of Edward III. until the reign of Henry VI.<sup>2</sup> the number of cities and boroughs summoned to Parliament appears to have been constant and uniform, and not to have exceeded 130 in all the Parliaments, and never so many in any one assembled together.<sup>3</sup>

The sum of all is this, that whilst the smaller boroughs by refusal or negligence to return members, or were from poverty left out of the sheriff's lists, until they ceased to be counted any longer among the parliamentary boroughs, the shires, the cities, the county towns, and principal seaports of the kingdom, made their elections with regularity and constancy, and their representatives became in consequence a vast majority of the House of Commons.<sup>4</sup>

## II. Of the electors in cities and boroughs.

Let the reader recall to mind, that we treat of times preceding the invention of Town incorporations, which date their creation from Henry VI.'s reign.

The elective franchise was regulated by the ancient common law, occasionally declared and enforced by statutes, modified, however, as appears in particular towns, by local usages. It is no longer in our power to ascertain, from the loss of town records, what those various customs were, but

<sup>1</sup> In 1381.

<sup>2</sup> Id. ib.

<sup>3</sup> Notitia Parl. preface, p. 7. Brevia Parl. Red. p. 230.

<sup>4</sup> Parliamentary Writs, reigns of Edw. I. and Edw. II. Not. Parl. p. 39.



the common law and common usages of the cities and boroughs, and by whom the elective franchise was possessed, may be learned from the public records.

Of which the first are the precepts for elections in cities and boroughs. They are in the following styles, addressed "to the mayor and citizens," or to the "mayor and burgesses," or to the "bailiff and burgesses," or to the "citizens, burgesses, worthy-men, and commons," these terms being used indifferently for the inhabitants of cities and boroughs.<sup>1</sup>

2d, The returns of elections by cities and boroughs inform us that their elections were made "by the mayor, aldermen, sheriffs, and commons;" in others, "by all the citizens;" in others, "by the mayor and commons;" in others, "by the burgesses and commons;" sometimes "by the mayor, constables, and all the burgesses, and with consent of all the Commons," and occasionally by "certain persons named and others, residents."<sup>2</sup>

In some instances, however, the election is expressly said to have been made by a certain number. But whether the right of election was by local custom limited to a few, or whether they were deputies appointed by the inhabitants, does not appear. The latter is the more probable, elections by proxy being in frequent use. For it was a custom in many counties to elect the knights,

<sup>1</sup> Parliamentary Writs, *passim*.

<sup>2</sup> Parliamentary Writs. Brevia Parl. Red. pp. 254—293.

the citizens, and the burgesses in the county court on the same day.<sup>1</sup>

First the knights were elected, then four or five citizens from each city, and the like number of burgesses from each borough (of whom the chief magistrate in each town was one), deputed by their fellow townsmen, returned to the sheriff the names of their several representatives, who with the knights, were all included in one indenture under the seals of the citizens and burgesses deputed.<sup>2</sup>

3d, The commissions issued for assessing and collecting the subsidies granted from year to year in Parliament, by the towns, inform us that they had been granted by the citizens, burgesses, and commons of all the cities and boroughs of the kingdom.<sup>3</sup>

The special commissions declare that the subsidy to be assessed and collected from that particular city or borough had been granted by "the mayor, men, and commons," or by the "burgesses and commons," or by "the citizens and worthymen," or in similar terms varied, as it happened to be a city or borough.

And it is most certain that these subsidies were in fact assessed upon and collected from the inhabitants in general under some exceptions hereafter to be noticed.<sup>4</sup>

4th, Another proof of the ancient right of elec-

<sup>1</sup> Brevia Parl. Red. p. 293.

<sup>2</sup> Id. p. 252.

<sup>3</sup> Parliamentary Writs, vol. ii. Rolls of Parl. 13 H. 4. App. No. 10.

<sup>4</sup> Firma Burgi, pp. 280. 288.

tion in towns is to be found in the custom of levying the wages paid to their members. These wages were levied by writs of right at common law upon the inhabitants of the towns respectively.

In the 8th year of Henry VI.'s reign the House of Commons passed a bill to enforce the payment of the wages due to the members for boroughs, in which is the following clause :—" The citizens and burgesses elected to come to Parliament by the election of the people of cities and boroughs within the realm have had, and from ancient times accustomed of right to have, their wages, of two shillings each, during the Parliament."<sup>1</sup>

3d, The statute of 35 Henry VIII. c. 11., made to improve and extend that excellent law which conferred upon Wales the right to send twenty-four members to the English Parliaments, expressly declares that it extends to Wales the law and custom of England, and proves in what manner the wages of members were assessed.<sup>2</sup>

" Be it further enacted, that forasmuch as cities and boroughs, not members, must contribute to the wages of the citizens and burgesses, therefore henceforth they shall have right to be summoned to the election of the shire towns and vote with them." And the justices of the peace are to tax the wages in the gross upon the inhabitants of boroughs wherein they reside, and four or six sub-

<sup>1</sup> Rolls of Parl. 8 Hen. 6. § 41.

<sup>2</sup> Statutes of the Realm.

stantial inhabitants shall rate, collect, and gather the same.

5th, The statute of 23 Henry VI. c. 13, 14., enacted to enforce the freedom of elections then assailed on all hands, and expressly declaratory of the ancient laws and customs of England, is in these words : — “ That citizens and burgesses coming to Parliament shall be elected, men, citizens, and burgesses, resident, dwelling, and free in the same cities and boroughs, and none other. Which citizens and burgesses have always in cities and boroughs been chosen by citizens and burgesses, and no other, and to the sheriffs of the counties returned, and upon their return received and accepted by the Parliament before this holden.”<sup>1</sup>

The statute then enforces the transmission of the precepts to the mayors and other returning officers, and proceeds thus : — “ That every sheriff shall deliver, without fraud, a sufficient precept to every mayor and bailiff of the cities and boroughs within his county, commanding them by the said precept, if it be a city, to choose, by citizens of the same city, citizens, and in the same manner and form, if it be a borough, by the burgesses of the same to come to Parliament,” — under penalties against the sheriffs and mayors.

Hitherto the proofs of the freedom of elections have been confined to ancient documents. Now we proceed to show, by the actual condition of the

<sup>1</sup> Statutes of the Realm.

elective right as at present possessed and exercised, the most unquestionable evidence of what the right was in former times.

But as the right in the cities and towns of England varies so much one from another, the general rules are lost in details, and analysis becomes indispensable to truth. We shall therefore class the boroughs into cities, county towns and cinque ports, and boroughs.

1st, Of the cities.

In eight of the cities the elections are made by citizens and freemen ; in five, by citizens ; in two, by the inhabitants ; in one, by inhabitants and freemen ; in two, by freemen ; in one, by freemen and freeholders ; and in London, by the liverymen.

In three cities only is the elective right possessed by their corporations, viz. Winchester, Salisbury, and Bath.<sup>1</sup>

2d, Of the county towns and cinque ports.

In fourteen of the county towns the elections are made by the inhabitants paying scot and lot ; in seven, by the inhabitants and freemen ; in five, by the burgesses, by the custom of those towns meaning inhabitants ; in three, by the freemen ; in one, by the householders ; and in one, by the freemen and burgesses.

The exceptions are Romney, Appleby, and Buckingham, the last vested in the corporation by royal charter.

<sup>1</sup> Notitia Parl. vol. i. pp. 1—66., and Oldfield's Hist. of Boroughs, part ii. vols. i. ii. iii. passim.

### 3d, Of the boroughs.

In forty-five of the boroughs the election is made by the inhabitants ; in eight, by the burgesses, by the custom of those towns meaning inhabitants ; in seven, by the freemen and burgesses ; in five, by the freemen ; in four, by the corporation and inhabitants ; in four, by the inhabitants and freemen ; in three, by the corporation and freemen ; in eight, by the free burgesses ; in one, by the mayor and resident burgesses ; and in one, by the corporation and burgesses.

In what manner the elective franchise is exercised in other boroughs, and how they have been deprived of their rights, will presently appear.

The sum of all is this, that of the cities, county towns, cinque ports, and boroughs of England there are 113 wherein the elections are still made by the inhabitants, freemen and burgesses by custom interpreted to mean inhabitants.

It is, therefore, evident, as well from ancient documents, as from immemorial custom maintained to the present times, that by the Law and Constitution of England the representatives of towns were elected by their inhabitants. In this conclusion agree the learning and experience of all times.

In 1623 the House of Commons appointed a committee of fifty-nine members, composed of the most learned men in the laws and usages of the land, that had ever met together in Parliament, — among whom was Sir Edward Coke, Mr. Selden, Mr. Pym and Mr. Glanville, — to ascertain some

great outlines of the general right of voting as a guide to electors and candidates, and as a remembrance of the ground on which the House had determined.<sup>1</sup>

Among other resolutions confirmed by the House, and established as laws for their procedure in elections, was the following:—

“That where no constant and certain custom appeareth who should be electors in a parliamentary borough, then recourse must be had to common law and common right:

“That of common right all the inhabitant householders and residents within the borough ought to have a voice in the election.”<sup>2</sup>

This declaration of the ancient right and custom of England has been sanctioned by five resolutions of the House of Commons.<sup>3</sup>

In the instance adduced of 1628 the decision was in these words:—“The election of burgesses in all boroughs did of common right belong to the Commons, and that nothing could take it from them but a prescription and constant usage beyond all memory.”<sup>4</sup> In the same spirit Sir Edward Coke writes, “If a city hath power to make ordinances, they cannot make an ordinance that a less number shall elect burgesses to Parliament than made the election before; for free elections of

<sup>1</sup> Journals of the House of Commons.

<sup>2</sup> Commons' Journals, vol. i. p. 708. Glanville's Rep. pp. 107. 142.

<sup>3</sup> Commons' Journals, in 1579, 1624, 1628, 1690, and 1790.

<sup>4</sup> Heywood on Elections, p. 177.

members of the high court of Parliament are *pro bono publico*, and cannot be compared to other cases of elections of mayors, bailiffs, and corporations.”<sup>1</sup>

And he proceeds to prove “that the King’s prerogative has no avail against the elective franchise; that he cannot legally control it, nor interfere with it, nor modify it, nor alter it in any way whatsoever. And this is evident from the records of all times, ancient as well as modern.

We close the proofs of the right of election by the following observations upon the subject:—

We have already seen that the words citizens and burgesses, in the times now treated of, meant in their customary sense the inhabitants of cities and boroughs. But this general sense was restricted by certain rules, and sometimes by local customs.

By a general rule were excluded from elections all women, all minors, all citizens and burgesses although freemen, if living upon public alms; and in most towns such as were unable or unwilling to pay scot and lot, and share in the common burdens chargeable upon the community.<sup>2</sup> To these were added such as claimed exemption from them, as foreign merchants who were not liable anciently to be assessed for aids and tallages, although dwelling and resident in our towns, or, if assessed, were discharged by courts of law, as

<sup>1</sup> Inst. 4. p. 48.

<sup>2</sup> Brevia Parl. Red. pp. 320, 321.



were Bonifacio de Perruchi and Cante de Scali in the reign of Edward II.<sup>1</sup>

“ In fine, they were deemed townsmen who had a settled dwelling in the town, who merchandised there, who were of the hanse or gild, who were in lot and scot with the townsmen, who used and enjoyed the liberties and customs of the town.

“ To have a settled dwelling or abode in the town made part, but not the whole, of the description of a townsman. Some other qualifications just mentioned, if not all of them, were requisite to complete the denomination.”<sup>2</sup>

d, Of the members for cities and boroughs.

By the ancient law and usage of England before the reign of Henry VI. the towns were accustomed to elect from their fellow-townsmen those who should represent their own interests. The statute of 1 Henry V. declares and enforces the practice in these words : — “ That at the elections to be made of men for Parliament by cities and boroughs there be elected men, citizens, and burgesses, resident, dwelling, and free in the same cities and boroughs, and no others in any ways.” Confirmed by the 23 Henry VI. c. 13, 14.<sup>3</sup>

This obligation to choose from fellow-townsmen, “ resident, dwelling, and free in the places they represented,” was in words, indeed, a restriction, but in reality an extension ; for it opened Parliament to men of all conditions, as experience proved ;

<sup>1</sup> Firma Burgi, pp. 274, 275.

<sup>2</sup> Id. p. 269.

<sup>3</sup> Rolls of Parl. 1 Hen. 5. § 20. 1413.

for as this custom wore out, so representation settled into fewer hands.<sup>1</sup>

This law was intimately connected with the system of taxation, wherein it was a fundamental maxim that the amount of the subsidy should not exceed the constituents' grant.

In legislating it had many advantages, as is evident from a comparison of the laws made while this custom was maintained, with the laws made when it had fallen into disuse. For if any one will be at the pains to class the objects of laws, he will find that nine out of ten were made to redress abuses, wrongs, and grievances that from time to time had arisen. But almost all grievances have been long felt and complained of before they find their remedy, and the more representation be limited to any particular class, the slower will the remedy be applied, because the fewer suffer from the wrong.

Or in the words of Sir Robert Cotton, "The Commons being most in numbers, and in most places of the land are likely to take most notice of those things that ought to be provided for, and being weak in power are most subjected to feel inconveniences and grievances."

It enlarged the invention and judgment of the Legislature ; for, under some illustrious exceptions, those who have most invented or advanced laws, sciences, and arts, whatever contributes to the

<sup>1</sup> Brevia Ret. before and after.

use and happiness of man, have been found among the middle or lower conditions of life.

It gave independence to Parliament, as sad experience proves. Lord Chancellor Shaftesbury justly and happily observes, "How far this act of 1 Henry V., requiring residence, should be observed, will be worthy consideration, for a confinement in this case seems to be an abridgment of a free choice; and it often happens, that men of the greatest knowledge and experience in the affairs of the kingdom have their abode principally in the metropolis.

"But the non-observance of this act, on the other side, has been often the occasion that courtiers have bolted into country boroughs, and by the strength of their purse and liberal baits have so seduced those poor rural animals, as to obtain an election from them, though to the ruin and overthrow of their own laws and liberties."<sup>1</sup>

2d, By the ancient custom of Parliament, as the knights for counties received their wages, which varied from eight shillings to five shillings a day, to defray their expenses, assessed and paid by inhabitants<sup>2</sup>, so the legal wages of each citizen and burgess were two shillings a day, though in many instances they consented to accept of less<sup>3</sup>; or if unusual charges had been incurred, they occasionally were presented with more.<sup>4</sup>

<sup>1</sup> Treatise on the Reform of Parliament.

<sup>2</sup> Brevia Parl. part iv. p. 561.

<sup>3</sup> Rolls of Parl. 8 Hen. 6. § 41.

<sup>4</sup> History of Sandwich, pp. 401, 402. 672.

Hence the members became bound to their constituents by closer ties, and were made to feel the trust reposed in them. Accordingly, all arts were used to break this ancient custom down, by claims of exemption from payment of the wages, to make them fall more burdensome on the rest; and by the denial or evasion of the writs for levying the wages, which issued from Chancery; of which the Rolls of Parliament, especially from the reign of Richard II., present so many examples.

This denial of justice was, as we have seen, one of the artifices resorted to by the priests in Henry VI.'s reign to gain a mastery over the Commons. The bill passed by the Commons to reform this abuse describes fully the right, and its denial, which have been already quoted; but the following clause belongs to the present subject: — “ And whereas before the wages were withheld, many wise and notable persons came to Parliament for the good of your Majesty and the whole realm, now none are elected nor come except people the most weak, poor, and powerless, and who remain during Parliament living at their own cost, to their perpetual impoverishment, if due remedy be not provided in this case.”<sup>1</sup> The bill then ordains that the members for cities and boroughs should have their writs, as of right they had been wont to have, from Chancery; but this bill was refused the royal assent.

<sup>1</sup> Rolls of Parl. 8 Hen. 6. § 41. 1429.

The payment of wages fell by little and little into disuse from the reign of Henry VI., from many causes : partly from the multitude of petty places, as Gatton and its like, summoned illegally in after times, as we shall presently see ; partly from many boroughs becoming impoverished, and being no longer able to bear the charge ; partly from the law of residence for members being disregarded, by which strangers of rank or influence came to represent cities and boroughs, though utterly ignorant of their interests, upon the implied condition of serving gratuitously ; but most by the constant efforts of the Crown, and the intrigues of the priests, to abolish this ancient and wise provision.

It is said that the last member who received wages from his constituents was the celebrated Mr. Mervill ; and never did there sit in Parliament a more honourable or independent man. A passage in Pepys' Memoirs proves their discontinuance in Charles II.'s reign : — " Being at dinner with Lord C. J. Pemberton, Lord C. J. North, Offley, and Charles Porter, we had much discourse about Parliament ; their number being uncertain, and always at the will of the King to increase, as he saw reason to erect a new borough : but all concluded that the bane of the Parliament had been the leaving off of the old custom of the places allowing wages to those that served them in Parliament, by which they chose men that understood their business, and would attend to it, and they could expect an account from which now they cannot ; and so the

Parliament hath become a company of men unable to give an account for the interest of the place they serve."

In fine, from these three immemorial customs,—viz., the free enjoyment of the elective franchise; the obligation to elect from their fellow townsmen, resident, dwelling, and free; and the maintenance of their members during Parliament, — was the representation derived in cities and boroughs until the reign of Henry VI., the period we now treat of.

We now proceed to deduce historically the abuses and encroachments upon the representation in subsequent times.

First, however, let us recall to mind the condition of England at this period, engaged in a disastrous war; that the King was an infant; the State in the power of the priests, who, by the disfranchisement of counties, and various arts to master elections, had reduced the Parliament to be a tool of the papal power. Trade was ruined, the towns fast falling to decay, — the revenue had sunk, yet the expenditure had risen, — insurrections began, — and a long and bloody civil war closed this disastrous reign.

Nor will it be forgotten that these accumulated evils poured upon the land from one common source, — the power of the priests struggling to hold their ill-gotten wealth, and arrest the progress of reason and reform.

We have seen by what horrid crimes the disfranchisement of counties had been effected; and that

by the denial of writs for wages, the decay of towns, and tampering and intimidation of electors, the representation had sunk. Yet this was not deemed enough,—other devices were invented, of which the first was the creation of what are now called “the Rotten Boroughs;” the second was the invention of corporations.

1st, Of “the Rotten Boroughs.”

Let us recall the condition of the law and constitution of Parliament at this period. It has been proved, that the right of boroughs to send members to Parliament was a right of the realm common to all boroughs, but under the following conditions:—

1st, That the election should be free.<sup>1</sup> 2d, That the electors should be citizens in cities, and burgesses in boroughs therein resident.<sup>2</sup> 3d, That the members should be their fellow townsmen, resident, dwelling, and free, and no others.<sup>3</sup> 4th, That the towns represented should maintain their members while serving in Parliament.<sup>4</sup>

We have seen that, through inability or unwillingness to perform these legal conditions, the poorer towns had one by one dropped off, till the number of parliamentary boroughs came to be constant and uniform, or nearly, about the middle of Edward III.’s reign, and so continued until the time now treated of.

<sup>1</sup> 3 Edw. 1. c. 5. Statute of the realm; and 7 Hen. 4. c. 15.

<sup>2</sup> St. 23 Hen. 6. c. 13, 14.

<sup>3</sup> St. 1 Hen. 5. c. 1.

<sup>4</sup> Rolls of Parl. 8 Hen. 6, and Parliamentary Writs for Wages.

Farther, it has been proved that, until the year 1478, no royal charter is extant which expressly confers on any town the right to send members to Parliament ; and that, by consequence, the creation of parliamentary boroughs by royal charters had never been a branch of the prerogative.

Nor could it be, if we consider the necessary consequences of such a power, as after experience proved ; for it would have been to reduce the Commons to a dependency upon the Crown in taxation and legislation, which they never were, nor ought to be.

Let it be well observed, that the malpractices of sheriffs in withholding writs for elections from boroughs entitled, had been abolished by the statute of 5 Richard II. c. 4. in these words : “ And if any sheriff shall be negligent in making returns of writs of Parliament, or shall leave out of the said returns any cities or boroughs which are held and of ancient times accustomed to come to Parliament, he shall be punished in manner as has been accustomed in like case in ancient times.”<sup>1</sup>

“ Neither,” says Mr. Prynne, “ could the sheriffs send precepts to any boroughs to elect members ; but to such only who of right ought, and have been anciently accustomed, to choose and send members.”<sup>2</sup> And the uniform and constant usage of England, from the reign of Edward III. until the middle of Henry VIth’s reign, proves that the sheriffs had no longer any powers to add to the

<sup>1</sup> Rolls of Parl. 5 Rich. 2. § 16.

<sup>2</sup> Brevia Rediv. p. 240.



list of parliamentary boroughs; because every town, that could make election agreeably to the four legal conditions stated above, were then in possession of the franchise.

The law and custom of Parliament understood, the frauds and violations committed upon it will appear evident and notorious.

The places illegally summoned to send members to Parliament during the reign of Henry VI. were as follows: —

1st, Gattton, summoned for the first time the 29 Henry VI. : notwithstanding the sheriffs' returns made in all times past, declaring that "there are no more cities or boroughs in that shire that ought or are wont to come to Parliament<sup>1</sup>;" notwithstanding its poverty, as is proved by an indenture of 33 Henry VIII., specifying "that there is only one inhabitant in this same borough."<sup>2</sup> And in the 1 & 2 of Queen Mary, and 2 & 3 of Philip and Mary, Mrs. Copley made returns as the sole inhabitant.

2d, Heytesbury, summoned the 28 Henry VI. for the first time; and then, as it is still, a poor village.<sup>3</sup>

3d, Hindon, summoned the 27 Henry VI.; a poor village.<sup>4</sup>

<sup>1</sup> Brevia Parl. part iv. p. 980.; and Br. Parl. Red. part iii. p. 213.; and Notitia, vol. i. p. 55.

<sup>2</sup> Notitia Parl. preface, p. 13.; and vol. i. p. 8—14.; and Commons' Journals, 26th March, 1628.

<sup>3</sup> Brevia Parl. part iv. p. 1003. Notitia Parl. p. 60.

<sup>4</sup> Id. ib.

4th, Wotton-Basset, summoned for the first time the 25 Henry VI.<sup>1</sup>

5th, Brember, summoned the 31 Henry VI. It had made returns occasionally in early times in conjunction with Steyning, and in some instances alone, but had ceased to be reckoned a borough for ages.<sup>2</sup>

Steyning, summoned the 31 Henry VI. It had been long rased out of the list of returning boroughs.<sup>3</sup>

Downton, summoned the 20 Henry VI. It had made some elections to early Parliaments.<sup>4</sup>

Chippenham, summoned in the 1 Henry VI., and then intermitted until the 20th of that reign. This borough had returned to some early Parliaments, but long ceased to be counted a parliamentary borough.<sup>5</sup>

Westbury, summoned the 27 Henry VI. for the first time, and incorporated.<sup>6</sup>

Pool, summoned the 31 Henry VI. It had made two elections in Edward III.'s reign, but none subsequent. Upon this occasion it was made a mayor town.<sup>7</sup>

Windsor, summoned 25 Henry VI. It had made some few elections in former ages, but none after the 14 Edward III. It was probably revived, being a dependency of the King's castle.<sup>8</sup>

<sup>1</sup> Brevia Parl. part iv. p. 1158. Notitia Parl. p. 64.

<sup>2</sup> Id. p. 984.; and Not. p. 57.

<sup>3</sup> Id. p. 1124.; and Not. p. 57.

<sup>4</sup> Id. p. 964.; and Not. p. 60.

<sup>5</sup> Id.; and Not. p. 62.

<sup>6</sup> Id. p. 1154.; and Not. p. 61.

<sup>7</sup> Id. p. 1087.; and Not. p. 18.

<sup>8</sup> Id. p. 1157.; and Not. p. 2.

Plymouth, then called Sutton, summoned the 20 Henry VI. It had made three returns in Edward I.'s reign ; but had long dropped out of the list of boroughs, being then a poor fishing town.<sup>1</sup>

Coventry, summoned the 31 Henry VI., who made it a county. It had made some few elections in very early times.<sup>2</sup>

Places summoned in Edward IV.'s reign : —

Wenlock. This little town had never sent members until it was privileged, by a charter from the King, dated 29th November, 1478, to send one burgess ; which is the first time such a clause is to be found in the charter of any borough, and consequently illegal : but its illegality did not hinder it from being repeated in after times.<sup>3</sup>

Ilchester, summoned the 12 Edward IV., although it had ceased to return for ages ; but, unable to bear the charge of a member, it discontinued until 19 James I., when it was restored.<sup>4</sup>

Ludlow, summoned for the first time the 12 Edward IV., who incorporated it.<sup>5</sup>

Grantham, summoned first the 7 Edward IV. who made it a borough, and gave it many privileges.<sup>6</sup>

Stamford, summoned 1 Edward IV., who incor-

<sup>1</sup> Brevia Parl. part iv. p. 1084. Notitia Parl. p. 15.

<sup>2</sup> Notitia, p. 58.

<sup>3</sup> Notitia, Preface, p. 12. 42.

<sup>4</sup> Brevia Parl. part iv. p. 1014. Notitia Parl. p. 45. Journals of the Commons, vol. i. p. 576.

<sup>5</sup> Notitia, p. 42.

<sup>6</sup> Brevia Parl. part iv. p. 983. Notitia, p. 33.

porated it. It had sent members to five ancient parliaments, then sunk out of the list of boroughs.<sup>1</sup>

From this period, the 12 Edward IV., the writs, returns, and indentures are all lost until the first year of Edward VI.'s reign, with the exception of an imperfect bundle of 33 Henry VIII.

We cannot, therefore, trace the farther creation of these boroughs historically during this interval; but when the writs and returns re-appear, we find the following boroughs added to the list: —

Orford, which had sent members to Edward I.'s Parliaments when it was a considerable sea-port; but its harbour being destroyed by encroachment of the sea, it fell to decay, and had not been a Parliamentary borough from Edward I.'s reign.<sup>2</sup>

Heydon, which had sent members to one Parliament in Edward I.'s reign.<sup>3</sup>

Brackley, which never sent in former times.<sup>4</sup>

Peterfield, had made one election, in 35 Edward I., then ceased.<sup>5</sup>

Thetford, had never been summoned in former times.<sup>6</sup>

Peterborough, which had been made a bishopric in 1541, and was under the power of the Dean and Chapter. It never before elected members.<sup>7</sup>

Berwick, which had never returned in former times.<sup>8</sup>

<sup>1</sup> Brevia Parl. part iv. p. 1123. Notitia Parl. p. 32.

<sup>2</sup> Notitia Parl. p. 52.

<sup>3</sup> Id. p. 68.

<sup>4</sup> Id. p. 37.

<sup>5</sup> Id. p. 47.

<sup>6</sup> Id. p. 36.

<sup>7</sup> Id. p. 86.

<sup>8</sup> Id. p. 38.

Preston, had elected to four Parliaments of Edward I. and one of Edward II.; then ceased.<sup>1</sup>

Lancaster, had elected to four of Edward I.'s Parliaments, two of Edward II.'s, and four of Edward III.'s; then ceased.<sup>2</sup>

Wigan, had returned to two Parliaments of Edward I., but never afterwards.<sup>3</sup>

Liverpool, in like manner, had made two returns, then discontinued, till restored. At this time it was a poor fishing town.<sup>4</sup>

Of these four towns of Lancashire the sheriff's returns had been : — “ There are no more towns in my county that ought or are wont to make returns, by reason of their poverty.”

Boston had sent to two councils, but never to a Parliament, until summoned, in the last year of Henry VIII.'s reign, when it was incorporated.<sup>5</sup>

Buckingham, which was summoned to the last Parliament of Henry VIII.; the election to be made by the Corporation.<sup>6</sup>

Westminster, which had never been summoned in former times, being then a poor place dependent upon the Abbey.<sup>7</sup>

In Edward VI.'s reign there were added to the number of parliamentary boroughs, Saltash, Camelford, Westloe, Grampound, Bossiney, St. Michael's, Penryn, and Newport, all wretched places in Cornwall, none of which had ever sent members

<sup>1</sup> Notitia Parl. p. 29.

<sup>2</sup> Id. p. 29.

<sup>3</sup> Id. p. 30.

<sup>4</sup> Id. p. 30.

<sup>5</sup> Id. p. 32.

<sup>6</sup> Id. p. 4.

<sup>7</sup> Id. p. 33.

before. Until the reign of Henry VI., there were but six boroughs in Cornwall that returned members to Parliament.<sup>1</sup>

Thirsk, which had never been summoned, nor returned, since the 23 Edward I.<sup>2</sup>

Maidstone, which was in this reign incorporated and impriviledged to return members.<sup>3</sup>

St. Alban's, which had elected to the Parliaments of Edward I., Edward II., and Edward III., then ceased, until restored in this reign.<sup>4</sup>

And, lastly, Lichfield, now restored and incorporated. It had returned to former Parliaments, but never after the 27 Edward III.'s reign.<sup>5</sup>

In Queen Mary's short reign of five years there were added the following : —

Highham-Ferrers, incorporated and empowered to return one member.<sup>6</sup>

Banbury, in like manner, incorporated and empowered to return one member, to be elected by the corporation.<sup>7</sup>

Knaresborough, summoned for the first time in 1553.<sup>8</sup>

Boroughbridge, which had never before sent members until 1553; and Aldborough, both these places being in one parish.<sup>9</sup>

Droitwich, which had returned to some few Parliaments of Edward I. and II., then ceased, until summoned in 1554.

<sup>1</sup> Notitia, p. 8—12.

<sup>2</sup> Id. p. 68.

<sup>3</sup> Id. p. 28.

<sup>4</sup> Id. p. 26.

<sup>5</sup> Id. p. 50.

<sup>6</sup> Id. p. 37.

<sup>7</sup> Id. p. 41.

<sup>8</sup> Id. p. 67.

<sup>9</sup> Id. p. 69.

Castle-Rising, which had never been summoned until the last year of this reign, being a poor village.<sup>1</sup>

Woodstock had twice elected members in Edward I.'s reign, then discontinued. It was a dependency of the royal palace.<sup>2</sup>

St. Ives, summoned for the first time in the last year of this reign.

Abingdon, empowered by charter, dated 24th November, 1557, to elect one member, but the election exclusively confined to the newly created corporation; subsequently acquired by the inhabitants.<sup>4</sup>

And, lastly, Ailesbury, in like manner chartered to return members, 14th January, 1553, and their election vested in the corporation, then created; which being by neglect dissolved, the election is now in the inhabitants.

No fact can more plainly prove how fraudulent and illegal these new-made boroughs were, than the following return made for Ailesbury, nineteen years after its creation.

In the Rolls Chapel the return for Ailesbury, the 14th Elizabeth, is in these words:—“To all Christian people to whom this present writing shall come: I, Dame Dorothy Packington, lord and owner of the town of Ailesbury, send greeting. Know ye me, the said Dame Dorothy Packington, to have chosen, named, and appointed my trusty and well-beloved Thomas Lichfield and George

<sup>1</sup> Notitia, p. 36.

<sup>2</sup> Id. p. 41.

<sup>3</sup> Id. p. 3.

<sup>4</sup> Id. p. 4. and p. 127.

Burdens, Esquires, to be my burgesses of my said town of Ailesbury. And whatsoever the said Thomas and George, burgesses, shall do in the service of the Queen's Highness in that present Parliament, to be holden at Westminster the 8th day of May next ensuing the date hereof, I, the same Dorothy Packington, do ratify and approve to be my own act, as fully and wholly as if I were or might be present there. In witness whereof, to these presents I have set my seal, this 14th day of May, in the 14th year of Elizabeth, by the grace of God, of England, France, and Ireland, Queen, Defender of the Faith."<sup>1</sup>

In the reign of Elizabeth the following were summoned for the first time, or after many ages' discontinuance : —

St. Germans, St. Mawes, Callington, Fowey, and East Loe, which had never elected to former Parliaments; and Tregony, that had made two returns in Edward I.'s reign.<sup>2</sup> Thus grew up the Cornish boroughs out of miserable hamlets.

In the first year of this reign, Minehead<sup>3</sup>, Sudbury<sup>4</sup>, Clitheroe<sup>5</sup>, Stockbridge<sup>6</sup>, and Newton in Lancashire<sup>7</sup>, none of which had ever returned members.

In the fifth year, besides the Cornish boroughs, were Tamworth<sup>8</sup>, summoned for the first time, and Beverley<sup>9</sup>, which in former ages had been thrice

<sup>1</sup> Append. to the Notitia.

<sup>4</sup> Notitia, p. 53.

<sup>7</sup> Id. p. 48.

<sup>2</sup> Notitia, p. 10—13.

<sup>5</sup> Id. p. 30.

<sup>8</sup> Id. p. 51.

<sup>3</sup> Id. p. 45.

<sup>6</sup> Id. p. 48.

<sup>9</sup> Id. p. 70.



summoned, but never made a return. It was now incorporated.

In the 13th year were summoned, for the first time, Queenborough<sup>1</sup>, Aldborough<sup>2</sup>, Eye<sup>3</sup>, and Cirencester<sup>4</sup>; Christchurch<sup>5</sup>, that had twice been summoned in Edward I. and II.'s reign, but never would make election; and East Retford<sup>6</sup>, that had returned once in 9th Edward II., then dropped out of the list of boroughs.

In the 27th year were added Berealston<sup>7</sup>, Bishop's Castle<sup>8</sup>, Lymington<sup>9</sup>, Whitechurch<sup>10</sup>, Haslemere<sup>11</sup>, Richmond<sup>12</sup>, besides the three following in the Isle of Wight,—Yarmouth, Newport, and Newton<sup>13</sup>,—none of these had ever before elected members; and Andover<sup>14</sup>, which had returned to all Edward I.'s Parliaments, and to the 1st Edward II., then discontinued until this time.

The author of the "Notitia" remarks of Berealston what may be applied to all the rest created in this reign, excepting Andover and Cirencester: "This is a hamlet; to it belongs no fair or market of consequence; and, being a small town, I cannot conceive (except through favour to its owners) how it came to send members to Parliament,—containing only about eighteen houses, the buildings of which are very ordinary."<sup>15</sup>

<sup>1</sup> Notitia, p. 28.

<sup>2</sup> Id. p. 52.

<sup>3</sup> Id. p. 53.

<sup>4</sup> Id. p. 24.

<sup>5</sup> Id. p. 49.

<sup>6</sup> Id. p. 39.

<sup>7</sup> Id. p. 18.

<sup>8</sup> Id. p. 43.

<sup>9</sup> Id. p. 47.

<sup>10</sup> Id. p. 49.

<sup>11</sup> Id. p.

<sup>12</sup> Id. p. 67.

<sup>13</sup> Id. p. 48, 49.

<sup>14</sup> Id. p. 49

<sup>15</sup> Not. Parl. vol. ii. p. 372

To this long list Corfe Castle remains to be added, incorporated and empowered to return members the 14th Elizabeth.

“ The town of Corfe, which is situated underneath the castle, contains about 120 houses. The inhabitants paying to church and poor, whose numbers may be near eighty, chose the members of Parliament ; which this borough first began to return in the 14th of Elizabeth, upon that queen’s granting this manor to her great favourite, Christopher Hatton, by whose interest this town and Bishops Castle, in Shropshire, procured representatives to Parliament.”<sup>1</sup>

“ And by the means of the courtiers in this reign most of our small boroughs, now exercising this liberty, were encouraged to assume it, especially in Cornwall and Hampshire.”

“ I beg leave to offer the following precedent in behalf of my assertion, very lately transmitted to me out of the town books of Newport in the Isle of Wight, which, though somewhat foreign to this county (Dorset), — since, perhaps, this borough of Newport may be the only one wherein care has been taken to insert any such entry, — I place it here. ‘ Memorandum: That at the special instance and procurement of Sir George Carew, Knight, Marshall of her Majesty’s most honourable Household, and Captain of the Isle of Wight, two burgesses were admitted into the High Court of

<sup>1</sup> Not. Parl. vol. ii. p. 498.

Parliament holden at Westminster the 23d day of November, in the 27th year of the reign of our Most Gracious and Sovereign Lady, Elizabeth, for the town of Newport; viz., Sir Arthur Bowcher, Knight, and Edmund Carey, Esquire. Whereas there were never burgesses admitted in any court of Parliament before that time during the memory of man.’”

In the reign of James I. the following boroughs were added: St. Edmonsbury<sup>1</sup>, Tewkesbury<sup>2</sup>, Tiverton<sup>3</sup>, all incorporated and empowered to elect members for the first time; and Bewdly, authorised to return one, but the election vested in the corporation alone.<sup>4</sup> Evesham, which had made one return 23d Edward I.; then discontinued until incorporated and summoned again the 1st of this reign.<sup>5</sup> Harwich had made also one return, 17th Edward III.; but had ceased until incorporated and summoned in the 12th year.<sup>6</sup>

Besides these towns, James I., upon his accession, had impriviledged by charters the universities of Oxford and Cambridge to elect members to represent them, — a right they had never before possessed.

Charles I. resolved and endeavoured to govern without parliaments, so added none. Charles II. chartered Newark, in the 29th year of his reign, to return members as a reward for its services to his father.

<sup>1</sup> Notitia Parl. p. 53.

<sup>4</sup> Id. p. 65.

<sup>2</sup> Id. p. 24.

<sup>3</sup> Id. p. 65.

<sup>5</sup> Id. p. 18.

<sup>6</sup> Id. p. 23.

Here ends this long list of parliamentary boroughs created by the Crown either of new, or else dragged up from the obscurity they had lain in for centuries, and to which they had been consigned by the laws and constitution of the land.

Another class of boroughs remain to be noticed, that owe their restoration to another power, — the resolutions of the House of Commons in the reigns of James I. and Charles I. The earliest of these was Ilchester, which had returned the 12 Edward IV., then discontinued until the 19 James I., when it presented a petition to the House of Commons to be restored. The House referred the petition to a committee, who reported in favour of the claim, and the Speaker received orders from the House to cause a writ to be issued accordingly.<sup>1</sup>

In the 22d of this reign Hertford, Wendover, Amersham, and Marlow were, upon their respective claims, restored in like manner.<sup>2</sup>

In the 4 Charles I. the boroughs of Melborne-Port and Webley<sup>3</sup>, and in the year 1640, Honiton<sup>4</sup>, Ashburton<sup>4</sup>, Malton<sup>5</sup>, Allerton, Oakhampton<sup>6</sup>, Seaford<sup>7</sup>, and Cockermouth<sup>8</sup>, were all restored by similar resolutions of the House of Commons.

The claims of these boroughs all rested upon one common ground; viz. the fact, proved by records, that they had returned to some former

<sup>1</sup> Journals of the House of Commons, vol. i. pp. 572. 576.

<sup>2</sup> Id. pp. 624. 782.

<sup>3</sup> Id. p. 891.

<sup>4</sup> Id. vol. ii. p. 36.

<sup>5</sup> Id. p. 45. 49.

<sup>6</sup> Id. p. 49.

<sup>7</sup> Id. p. 78.

<sup>8</sup> Id. pp. 86.

parliaments. The resolutions of the committees favourable to their claims are supported by the learning of many eminent men, and to their resolutions we shall have occasion to return in the following chapter.

But the real motives for the restoration of these boroughs is to be found in the spirit of the House Commons, and the principles and characters of those members by whose influence its resolutions were taken.

Their restoration was opposed by the court and its party in the House; but proposed, supported, and effected, by the great men who then stood forward to oppose the arbitrary misrule of the Stuarts. Of these the foremost were Sir Edwin Sandys, Mr. Pymme, Mr. Hampden, Mr. Selden, Mr. Hakevill, and Mr. Glanville.<sup>1</sup> Mr. Hakevill was afterwards returned for Amersham, and Mr. Hampden for Wendover.<sup>2</sup>

The real motive plainly was to strengthen their party in the Commons, then struggling for the liberties of the land, by resorting to the same weapons in defence of the constitution that had so long and illegally been used to subvert it; satisfying themselves, perhaps, that their ends would justify the means.

One advantage was gained; the court, finding that borough-making was a game at which two could play at, abandoned it as a

Let us now close these long and tedious details, by some observations upon the subject in general. 1st, It is remarkable that of the boroughs above enumerated, 109 in all, only eleven were towns of any consideration at the time of their creation; viz. Coventry, Lichfield, Lancaster, Berwick, Stamford, Grantham, St. Alban's, Maidstone, Abingdon, Cirencester, and Newark; besides the two universities. The following thirteen have since grown up to riches and population: viz. Liverpool, Westminster, Plymouth, Pool, Preston, Wigan, Boston, Morpeth, Harwich, Windsor, Andover, Tiverton, and Tewkesbury.

The remaining eighty-five were, at the time of their creation, hamlets, villages, or poor country towns; and the greater number continue so still. Of these, forty-three are included in Schedule A. and twenty-one in Schedule B. The rest have, as appears, enough of inhabitants to save them from a similar fate.

2d, We have already proved that this practice of borough-making began in the reign of Henry VI.; that it was one of the many inventions of the Romish priests to overpower and outvote the actual representatives of the Commons, to arrest the advancement of reason and true religion, and preserve their unwieldy wealth acquired by ages of fraud.

We have seen that as England became Protestant the practice ceased, but the bad example

remained, and was followed up from age to age to serve the ends of parties, or men in power.

3d, We have proved that the greater number of these boroughs were illegal in their original creation ; so were they maintained, in defiance of the law ; for the statute law ordained then, and does so still, that “ all elections shall be free,” and that the violations of this law made a substantial ground for the trial and deposition of Richard II., and it has been declared and enforced from age to age ; but what freedom of election could there be in a wretched hamlet or village, the property of some one man ?

Again, the common law required, and the statute law enforced, that all elections in boroughs should be made by “ burgesses therein resident ;” and this statute continued unrepealed until the year 1774.<sup>1</sup> But in some this condition became impracticable from the want of inhabitants, and in many a mere form, evaded by a thousand tricks, of which every man’s experience will furnish him with examples.

Again, the law required “ that the members elected should be, in cities, citizens ; and in boroughs, burgesses, therein resident, dwelling, and free, and no others.” But this, the ancient and wise institution of the land, became impracticable in a hamlet, village, or poor country town, where perhaps not one man was to be found above the con-

<sup>1</sup> 14 Geo. 3. c. 58.

dition of an ignorant rustic, to whom the laws, privileges, forms, and business of Parliament were utterly unknown.

And hence arose the practice of electing strangers instead of fellow-townsmen, as the law and constitution of Parliament required; whence so many mischiefs have followed, among others that so happily described by Lord Chanc. Shaftesbury: "The non-observance of this act has been often the occasion that courtiers have bolted into country boroughs, and by the strength of their purse and liberal baits have so seduced these poor rural animals, as to obtain an election from them, though to the ruin and overthrow of their own laws and liberties."

Again, the law required, and wisely as experience proved, that the expenses of the representative should be borne by his constituents. This also became impracticable from the poverty of the places represented.

Lastly, the erection of such poor and dependent places into parliamentary boroughs was a manifest fraud; for the Magna Charta of Edward I. and the Statute de Tallagio had enacted or rather confirmed what had been the immemorial right of England, "that no tallage or aid shall be taken or levied by us or our heirs in this realm, without the good will and assent of archbishops, bishops, earls, barons, knights, burgesses, and other freemen of the land."<sup>1</sup> Let it be well remembered that this

<sup>1</sup> 25 Edw. 1. 1297.



celebrated statute was for many ages continued to be re-enacted at the commencement of every Parliament, and still remains the existing law of the land. But by this fraudulent device certain individuals or places were selected and empowered to grant the money of the nation: a petty village could impose taxes upon a neighbouring city; thus Gatton, Orrery, and Bramber outvoted the representatives of London; in short, one was empowered to pick the pocket of another, under the colour of privilege and law.

One class of boroughs still remain to be noticed, namely, those of Wales and the cities of Chester and of Durham, created by statute law. But as these were not abuses, being made in the true spirit of the Constitution, we shall not enter upon them here. The forms and principles of their creation will fall to be treated of in the following chapter.

## II. Of Corporations.

It has been already proved that the incorporation of towns came into practice in the reign of Henry VI.; that the earliest upon record was granted, in the year 1440, to the town of Hull; that this practice was a device of the priests to supplant the ancient magistracies, to obtain a mastery over elections, and bring the government of towns into the hands of a few, modelled upon the monkish institutions.

Laws are like wines, which savour of the season they are made in. The creation of boroughs and of corporations are of the same age and for the

same end, — to ruin the independence of the Commons; the former were to act in Parliament by outvoting the actual representatives, — the latter in their respective towns to exclude the inhabitants.

Corporations were imposed upon towns under two different forms. By the one the right of election was, by charter, exclusively confined to the corporation; by the other the corporation was made to supplant the former magistracy, or introduce a new, where none had been before, leaving the rest to time.

The first form, which expressly excluded the inhabitants from their right of election, was attempted rarely, being opposed alike to the feelings, the customs, and the laws of England. Until the reign of Charles II. there does not appear more than twenty-six such corporations in all, and these imposed upon the smaller boroughs, and at intervals, as if by stealth.<sup>1</sup>

The second form of corporation was ostensibly limited to magistracy, but secretly designed against the elective right, as experience proved.

The reader may remember that representation was immemorial by the common right of the realm, antecedent to, and totally unconnected with, corporations, or even with magistracy, and remains so still; for, of the parliamentary boroughs, fifty-six neither ever were nor are at this day incorporated under any form: some there are where the cor-

<sup>1</sup> Notitia Parl. pp. 4. 7, 8. 18, 19. 23. 36, 37. 41. 47. 50. 53. 61, 62. 64, 65. 74.

poration has been dissolved, and some where no magistracy exists or ever did.

No sooner were those corporate bodies established, than they began by little and little to encroach upon the elective right of the inhabitants. Upon their artifices, frauds, and violences, volumes might be written; the histories of our towns are filled with them.

Considered in the mass, these artifices appear of endless variety; but, analysed, they discover a singular agreement, pursuing the same course, to arrive at the same object.

Their first attempt has uniformly been to exclude inhabitant householders from their elective franchise, and confine it to freemen. The second, to exclude freemen, and confine the right to the corporation and burgesses, limiting the term burgesses to a certain number admitted by themselves. The last, to reserve for the magistrates and council the nomination of members to the exclusion of all besides.

The Journals of the House of Commons prove that these contests for power have occurred, for the most part, in petty boroughs, seldom in populous towns, and very rarely indeed in the great cities. They followed as an unavoidable consequence of the creation of poor boroughs and corporations. Mr. Prynne says, that in his time "their tumultuous, surreptitious, fraudulent elections, and false or double returns, take up more time in the Committees of Privileges and Commons' House, than all public

businesses of Parliament of highest concernment, which are greatly retarded by such disorderly elections and returns.”<sup>1</sup>

The numbers of these contests between corporations and inhabitants of boroughs cannot with accuracy be stated in early reigns, from the loss of parliamentary records; but towards the end of James I.’s reign, they became more and more frequent and troublesome. In the two last Parliaments of this reign, they had increased to that degree, that many of the ablest members agreed in opinion, that some certain rules, or great outlines of the legal right of voting, were become necessary as a guide to the electors and candidates, and as a remembrance of the ground on which the House had determined.

A select committee was appointed for this purpose of fifty-nine members, among whom were many men of vast knowledge, capacity, and experience in the laws and practice of Parliaments, as Sir Edward Coke, Mr. Selden, Mr. Pymme, Mr. Noy, Sir William Strode, Sir Walter Earl, Sir Edward Cecil, Sir George Goring, Sir Heneage Finch, afterwards Lord Chancellor, and Mr. Glanville, their chairman, who has preserved their proceedings.<sup>2</sup>

Among their resolutions confirmed by the House, and established as laws for their procedure in elections, are the following:—

“1st, That where no constant and certain custom

<sup>1</sup> *Brevia Parl. Red.* p. 239.

<sup>2</sup> *Journal of the House of Commons*, 23d Feb. 1623.

appeareth who should be electors in a parliamentary borough, then recourse must be had to common law and common right.<sup>1</sup>

“ That of common right all the inhabitants, householders, and residents within the borough, ought to have a voice in the election.

“ 2d, That no decree, constitution, or by-law, (albeit it were granted by charter or by prescription, that this town (Winchelsea) might make divers constitutions and by-laws concerning their other affairs or government,) can alter the manner or right of election of barons or burgesses to the Parliament, but to that purpose utterly void, because the Commonwealth being interested in the freedom and consequence of such elections, the same cannot be restrained in any sort by any private ordinance whatsoever.<sup>2</sup>

“ 3d, Resolved, that no royal charter can alter the form of the right of election for burgesses to Parliament, from the course these before time out of mind held. Although it may incorporate a town not incorporate before, or may alter the name or form of corporation there, in matters concerning only themselves, and their own government, rights, and privileges, yet it cannot alter or abridge the general freedom or form of election for burgesses in the Parliament wherein the commonwealth is interested ; for then, by the like reason that it might be brought from the whole commonalty, or from all

<sup>1</sup> Journals of the House of Commons, vol. i. p. 708. Glanville's Reports, pp. 107. 142.

<sup>2</sup> Glanville's Reports, p. 18.

the burgesses of a town to a bailiff (as has been done in this very case), so might it be brought to a bailiff and one or two burgesses, or to the bailiff alone, which is against the general liberty of the realm, that favoureth all means tending to make the elections of burgesses to be with the most indifferency, which, by common presumption, is when the same are made by the greatest number of voices that reasonably may be had, whereby there will be less danger of packing or indirect proceeding.”<sup>1</sup>

But these declarations of public rights were empty sounds, opposed to men whose objects were, not to know what the law was, but how they might trample it down.

Charles I. resolved to govern without Parliaments, so needed not corporators to master elections; then followed the civil wars: but with the Restoration began anew this system, at first by the slow means described, till the Court, wearied with this tedious struggle, and believing itself strong enough, in 1682 threw off the mask. The House of Commons had passed through its second reading of the Bill to exclude the Duke of York from the throne: Parliament was immediately dissolved, to prevent its progress, having sat but seven days.<sup>2</sup>

During the three remaining years of this reign Charles II. governed not only without Parliaments but without law. To persist in governing England without some show of Parliaments was deemed

<sup>1</sup> Journals of the House of Commons, vol. i. p. 703. Glanville, p. 55.

<sup>2</sup> Rapin's Hist. vol. ii. pp. 722, 723.

impracticable, so the end desired was to destroy their independence. Force and bribery were but temporary measures ; the corporations alone offered a permanent power of control.<sup>1</sup>

Accordingly, it was resolved upon to remodel the existing corporations, and to create others, formed in a manner yet more exclusive, that should enable the Court to cause such persons to be elected to Parliament as it pleased.<sup>2</sup>

London was first attacked, and, under the colour of law, deprived of its charters and franchises, in revenge for its devotion to the public cause. Many of its chief citizens were tried and condemned in heavy fines.<sup>3</sup> Its corporation, under some shallow pretences, was illegally dissolved, the courts of law having been first filled with the creatures of the Court. The liberties of the city were forfeited and seized into the King's hands, who appointed a military governor.<sup>4</sup>

The country was struck with terror by the frequent and bloody executions of those who had opposed the court. The moment was seized upon, emissaries prepared the principal towns, and the judges upon the circuit completed the work, by intimidating them into a surrender of their rights and privileges.<sup>5</sup>

At this juncture Charles II. died, and a despot

<sup>1</sup> Rapin's Hist. vol. ii. pp. 724, 725.

<sup>2</sup> Id. p. 726.

<sup>3</sup> Parl. Hist. vol. i. p. 579. ; and Rapin's Hist. vol. ii. p. 727.

<sup>4</sup> Report of the Committee of Grievances. Journals of the House of Commons, 5th March, 1689.

<sup>5</sup> Rapin's Hist. vol. ii. p. 734.

yet more bigoted and sanguinary succeeded.<sup>1</sup> The Romish priests, long the secret counsellors, became now the avowed masters of the government, and pursued their accustomed course of terror and blood.<sup>2</sup>

In place of the ancient charters, surrendered through fraud or violence, others were granted, by which the election of members was taken out of the inhabitants and restrained to the corporators, all being excluded who were unwilling to become mere tools. Where such could not be found, strangers were placed in the magistracy; and in the boroughs of Cornwall, the officers of the Guards were made the corporators.<sup>3</sup> One example of servility may serve for all: —

The corporation of Chester had surrendered their charter of Henry VII., in affirmance of the ancient laws and privileges of that city, and obtained another in a more exclusive form. When James II. visited Chester, its recorder, at the head of the corporation, addressed him in the following words: — “The corporation is your Majesty’s creature, and depends merely on the will of its creator; and the sole intimation of your Majesty’s pleasure shall ever have with us the force of a fundamental law.”<sup>4</sup>

A Parliament was summoned, and members

<sup>1</sup> Rapin’s Hist. vol. ii. p. 734.

<sup>2</sup> Id. pp. 751—757.

<sup>3</sup> Commons’ Journals, 5th March, 1689. Report, Ant. 3.; and Burnet’s History of his own Times, vol. i. p. 625.

<sup>4</sup> Oldfield’s Hist. of Boroughs, part ii. vol. i. p. 108.



were selected for their "passive obedience." Never had a more servile herd disgraced the name of Parliament.<sup>1</sup> Their first resolution was, "That this House doth acquiesce, entirely rely, and rest wholly satisfied in his Majesty's Gracious word and repeated declaration to support and defend the religion of the Church of England as it is now established."<sup>2</sup>

Their second was, to grant an enormous revenue for life, and that without discussion, in two hours' time.<sup>3</sup>

The conduct of this Parliament affords a marked example of what experience proves, that upon the freedom of election rests whatsoever security we have, for our properties and religion.

But these frauds, cruelties, and open violations of all rights, at length aroused the spirit of England long enduring; for, as Lord Somers justly says, "Till the mischief be grown general, and the designs of the rulers notorious, then and then only will the people be for righting themselves."<sup>4</sup>

Happily the Revolution came and swept away these new-made corporations, before they had grown into custom and become familiar by use; for, though in manifest violation of law, they had many partisans, as the fate of the corporation bill proved.<sup>5</sup> This bill was designed to restore to towns their ancient rights and liberties, and to punish

<sup>1</sup> Rapin's Hist. vol. ii. p. 746.

<sup>2</sup> Parl. Hist. vol. iv. p. 1358.

<sup>3</sup> Rapin's Hist. vol. ii. p. 746.

<sup>4</sup> Judgment of the whole Kingdom.

<sup>5</sup> Declaration of Rights, § 13.

magistrates and officers accessaries to the surrender of charters. It was opposed in the Commons by all the power of the Tory party, yet passed by a vast majority ; but in the Lords by a single vote ; and the Parliament was prorogued to prevent its becoming law.<sup>1</sup>

The new corporations having been declared by statute law illegal and utterly void, the former corporations crept into place again, and returned to their old arts. It were an endless task to recapitulate them, and a needless one too, every man's experience being stored with examples. But the progress and continued increase of their encroachments upon the rights of the inhabitants of boroughs, and the manner whereby they gained the countenance of law, and assumed the shape of legalised usages, well merits to be known.

It will be remembered that the encroachments of corporations upon the elective rights had been made generally in the small boroughs, and rarely in the cities and populous towns. When a contest came to be tried in the committees of the House of Commons, the interest of the proprietor of that borough was generally united to that of the corporation ; opposed to whom were in some few instances the inhabitants in general, in most but a part of them, in many some single individual.

The judges were committees upon elections. Their members, before the Granville Act, were

<sup>1</sup> Parl. Hist. vol. v. p. 508. 10th January, 1689.

nominated by majorities of the House, in other words, by the minister, who naturally inclined to serve the proprietor or corporation, who were the trump in his hand, rather than the inhabitants who were but the plebeian cards. Or if the contest was for a borough opposed to ministers, the proprietors in the House made common cause.

The right of voting had been in all ages, as has been proved, "in the inhabitant householders where ever no ancient immemorial custom of the borough had restricted the right."

"But the right could not be restricted by King's charters as had been oftentimes attempted, but as often been declared to be illegal."—"Nor could it be restricted by any by-law, because no private ordinance could alter or abridge the general freedom of election wherein the Commonwealth is interested."

Before the period of the Granville Act in 12th April, 1770, the contests between corporations and the inhabitants of towns touching the elective right had increased from age to age. Before the restoration they were comparatively few, though more frequent than in former times; and the decisions were rarely contrary to law, that is, contrary to the rights of the inhabitants. From the Restoration until the Revolution, the numbers of contests multiply fourfold, and the decisions may be observed to be more and more inclined to abet the incroachments of corporators and proprietors.

And from the Revolution until the year 1770

the contests continue to increase, and the decisions upon them to have less and less regard to law, until at length all law, justice, and decency were cast aside.

Sometimes the elective right in the same borough had been contested and tried seven different times; the corporation persisting in their usurpations, the inhabitants in defending their rights: the decisions being now for the one party, now for the other. Sometimes two or three, or more, decisions were given for the inhabitants; yet, in defiance of them, the proprietors or corporators persist, until at length they obtain a favourable decision.

To prevent these repeated contests in the same borough, the House at length resolved, in 1735, upon a standing order for restraining counsel from offering evidence touching the legality of votes, contrary to the last determination of the House. And the statute 2d of George II., by sanctioning this resolution, fixed the seal upon the abuses introduced.

Sometimes "the right of the commonalty" was decided to mean inhabitant householders, agreeably to law and usage; at other times, in contempt of both, it was decided to mean "mayor, bailiff, council:" sometimes "populacy" was resolved to mean townsmen; then, at other times, it would shrink into a corporation consisting of twenty-five individuals, outraging justice, usage, and the common proprieties of language.

These iniquitous decisions are described by Mr.

Hatsell, in his "Precedents of the House of Commons," in the following words :— "That shameful mode of trial, in which, under the former judicature, every principle of decency and justice were notoriously and openly prostituted."<sup>1</sup>

"Mr. Granville told me that he found his health and spirits very much declined ; that he had given up all thoughts of office, and did not wish to take any active part in public business ; and, indeed, he added with a deep sigh, and putting his hand upon his side, "I am no longer capable of serving the public—my health and spirits are gone. The only thing I have any intention of doing, is to endeavour to give some check to the abominable prostitution of the House of Commons in elections, by voting for whatsoever has the support of the minister ; which must end in the ruin of the public liberty if it be not checked."

"In pursuance of this resolution, Mr. Granville, on the 7th of March, 1770, proposed his plan, in a most able and convincing speech. The bill received the royal assent upon the 12th April ; and Mr. Granville died on the 13th November following, with the satisfaction of having completed one of the noblest works for the honour of the House of Commons, and the security of the constitution, that was ever devised by any minister or statesman."

Well does this true gentleman of England de-

<sup>1</sup> Hatsell's Precedents of the House of Commons, vol. ii. p. 20, 21. note.

serve this tribute of gratitude. It was a monstrous thing, that the only court where justice could not be found should have been the court of Parliament ; that all other rights should have been fixed by law, that right alone excepted, the most precious of all, the elective right, — since upon it depends the enjoyment of all rights, all property whatsoever.

The abuse was checked for the future ; but the wrongs already done were left unrepaired. Their remedies were to be sought in the seats of these disorders already traced to the “ Rotten Boroughs,” created to outvote the actual representatives of the nation ; and to the corporations, designed to supplant the ancient magistracy, and defraud the townsmen of their rights.

## CHAP. IV.

OF THE RIGHT OF THE HOUSE OF COMMONS TO  
REFORM ABUSES IN THE REPRESENTATION.

**T**HE constitution has invested the House of Commons with the right of reforming abuses that arise in the representation, for three ends essential to parliaments :—1st, The independence of the House of Commons ; 2d. Its exclusive jurisdiction over its own members ; and, 3d, Its sole and absolute right to grant or withhold supplies. We shall treat of these severally.

1st, Of the independence of the House of Commons.

One great and important fact forms the foundation stone of their independence ; namely, that the House of Commons represent all the commons of the land, and that the Lords sit in Parliament for themselves.

This is demonstrated by the records of Parliament in every age and of every class. A few examples, drawn from different ages, will make this matter clear.

In the 51 Edward III., the House of Commons resolved :— “ That, of the common right of the kingdom, two persons are and will be chosen for all the commonalty of the said counties, except

the prelates, dukes, earls, barons, and such as hold by barony; and, besides, cities and boroughs, who ought to choose of themselves such as shall answer for them.”<sup>1</sup>

In the 15th year of Richard II. this fact is declared in the following terms: — “That it may be ordained that as the knights are in each parliament for the Commons of the counties, and the Lords of the said franchises solely for themselves;” and afterwards thus, “considering that the said knights in each county are elected, and come as well for the said franchises as for the rest of the said counties, throughout the realm of England.”<sup>2</sup>

The statute 2 Henry V. declares, “that the lieges that come from the Commons of the land have ever had their freedom and liberty, that no statute or law should be made without their assent.”<sup>3</sup>

The Petition of Right, which was a solemn declaration of the constitution and privileges of the Commons, commences thus: “We, the knights, citizens, and burgesses, in the name of the whole Commons of the realm of England, with uniform consent for ourselves and our posterity.”<sup>4</sup> And Mr. Prynne, writing in defence of the Lords’ House, admits, that “our peers in Parliament, though they serve for the common good of the whole kingdom, which has always trusted in them in mat-

<sup>1</sup> Rolls of Parl. 51 Edw. 3. p. 368.

<sup>2</sup> Id. 15 Ric. 2. § 37.

<sup>3</sup> Id. 2 Hen. 5. § 22.

<sup>4</sup> 20th June, 1604. Hatsell’s Precedents, vol. i. pp. 232, 233. Coke’s Inst. iv. c. i. p. 1.



ters of council, judicature, and making laws, yet they represent no persons but themselves only, and bear their own expenses.<sup>1</sup>

Lastly, in the year 1701, the House of Commons resolved: "That to assert that the House is not the only representative of the Commons of England, leads to the subversion of the rights and privileges of the House of Commons, and the fundamental constitution and government of the kingdom."

Did this important fact need confirmation, that is to be found in the opinions of the judges and of the statesmen of all times.

Upon this broad and solid foundation are established all the laws, rights, and privileges of the Commons in Parliament. Hence it is declared, "that the ancient rights of the subjects of this realm chiefly consist in the privileges of this House of Parliament."<sup>2</sup> "That those privileges are their rights and liberties, no less than their very lands and goods."<sup>3</sup> And upon another occasion, when the lords intermeddled in the election of a member, the House of Commons informed them, "That they are a part of Parliament to make laws; yet, for any matter of privileges of their House, they are, and ever have been, a court of themselves, of sufficient power to discern and determine without the Lords; as the Lords have always used to do theirs without them. And they cannot but take notice of that unreasonable as well as unnatural

<sup>1</sup> Prynne's Plea for the Lords, p. 26.

<sup>2</sup> Petition of Right, Hatsell's Precedents, vol. i. p. 232.

<sup>3</sup> Id. Art. 1.

insinuation, whereby their Lordships endeavour to separate the interests of the people from their representatives in Parliament; who pretend to no privileges but upon their account, and for their benefit.”<sup>1</sup>

Here we see the true ends of the laws, rights, and privileges of Parliament, which Sir Edward Coke entitles “The Heartstrings of the Commonwealth.”<sup>2</sup>

The privileges of the Commons, how different soever they may be in their beginnings, their forms, and their objects, have one quality in common, thus expressed by Mr. Hatsell:—“The leading principle which appears to pervade all the proceedings between the two Houses of Parliament is, that there shall subsist a perfect equality with respect to each other, and that they shall be in every respect totally independent one of the other. From hence it is that neither House can claim, much less exercise, any authority over a member of the other: but if there is any ground of complaint against an act of the House itself, against any individual member, or against the officers of either House, this complaint ought to be made in that House of Parliament where the offence is charged to be committed; and the nature and mode of redress or punishment, if punishment be necessary, must be determined upon and inflicted

<sup>1</sup> Hatsell's *Precedents*, vol. iii. App. pp. 314, 315. 317. Coke's *Inst.* iv. ch. i. pp. 23. 28.

<sup>2</sup> *Inst.* iv. c. i. p. 49.

by them. Indeed, any other proceeding would soon introduce disorder and confusion.”<sup>1</sup>

The independence of the House of Commons having been attacked at different times, and by different means, we shall now investigate in what manner the Commons were, at different periods, obliged to assume new privileges in their own defence, and to exert new modes of maintaining and defending those privileges, indispensable to the independence of their House.<sup>2</sup>

And the assumption of such privileges necessary to their independence has been sanctioned by the laws and customs of Parliaments in all ages, as their records demonstrate.

Nor are such assumptions peculiar to the Commons, but have been resorted to likewise by the Lords, whose privileges have arisen from time to time out of the resolutions of their House, as their independence was attacked either by the Crown or by the Commons; and such resolutions, being necessary to the independence of their House, have been sanctioned by the laws and customs of Parliament, as experience proves.

Mr. Hatsell says, “The privileges of the House of Lords arise out of the resolutions of the House regarding their members.”<sup>3</sup> And of this their Journals give abundant proof.

In tracing the various privileges of the Commons,

<sup>1</sup> *Precedents of the House of Commons*, vol. iii. p. 67.

<sup>2</sup> *Id.* vol. i. p. 205.

<sup>3</sup> *Id.* vol. i. p. 144.

one general and striking fact becomes evident, — that in no instance whatsoever, ancient or modern, does the House owe a privilege to the concession of the Crown or of the Lords. In short, they possess the privileges indispensable to their independence, because they have never wanted the spirit to defend them.

“No privilege of the House was ever established firmly until they took that privilege into their own hands ; of which we find an example in the privilege of subpœnas, which, though vouched by the records of the Commons, was not allowed by the Chancellor, unless authorized by the records of Chancery, 10th February, 1584 ; and therefore the House took the remedy into their own hands, which proved more effectual to correct the evil.”<sup>1</sup>

Thus much of privileges in general. Now we proceed to show by experience, that, by the laws and constitution of Parliament, the Commons have the inherent right, in all ages exercised, of assuming from time to time such privileges as were required to maintain their independence, and, what is the end of all their privileges, the subjects' rights. But as the instances of this are infinite that have occurred in the succession of ages, we shall here notice but a few of the most important and remarkable, whence the nature of others may be known : —

1st. Precedent in the enactment of laws.

<sup>1</sup> Hatsell's Precedents, vol. i. p. 97.

We have already seen that, by the ancient and constant usage of England, no law ever was or could be enacted without the express consent of Parliament<sup>1</sup>; nor was the royal assent ever given to any bill until it had passed through both Houses, "as," says Selden, "is known to all conversant with records."

In early ages, bills for the redress of grievances began usually with the Commons; who, coming from most places in the land, and representing all conditions of men, knew best the people's wants.

These bills were drawn up in writing, in one and the same form, (excepting such as were made by word of mouth of the Speaker, which rarely occurred,) namely, as petitions moving the king to ordain laws for the redress of such mischiefs as were found grievous. To these petitions, when they had passed the Lords, the King in Council made an answer, sometimes to part, sometimes to the whole, sometimes by denial, at others by assent.<sup>2</sup>

The petitions, with the King in Council's answers to them, were entered in the Parliament rolls<sup>3</sup>, after the prorogation or dissolution of Parliament; and out of both the chancellor, judges, and others drew up the statute roll; and the statutes thus drawn up, and engrossed into the roll of statutes, were affixed to proclamation writs directed to the

<sup>1</sup> Petyt's *Jus. Parl.* p. 105., and Selden there quoted.

<sup>2</sup> *Rolls of Parl.* passim. Petyt's *Jus. Parl.* p. 105.

<sup>3</sup> Sir Matt. Hale's *Hist. of the Common Law*, p. 14.

several sheriffs, to proclaim them as laws in their respective counties.<sup>1</sup>

But many inconveniences were found in this course; for sometimes the petitions and answers were not entered in the rolls of Parliament, but suppressed, of which there are many instances; and sometimes petitions of the Commons that they had never made, nor knew of, were enrolled.<sup>2</sup>

Again, in the drawing up the statutes from the Parliament rolls, sometimes they were drawn up quite contrary to the sense and meaning of the petition of the Lords and Commons, and answers made by the King and Council; sometimes clauses were suppressed, or others inserted; and occasionally statutes were forged entire, without the consent or knowledge of Parliament.<sup>3</sup>

Of these artifices and frauds upon the statute laws of the land Sir Edward Coke has preserved numerous instances: but he justly observed, "To handle all at large would require a whole treatise, which (we having broken the ice) some good man and lover of his country, we hope, will undertake to make known." And in the various MSS. works of Sir Matthew Hale, many more examples of such forgeries are stigmatised, besides those already noticed in the Second Chapter of this History.

The Commons having found by sad experience that these frauds threatened their very independ-

<sup>1</sup> Rolls of Parl. 2 H. 4. § 21.

<sup>2</sup> Petyt's Jus. Parl. p. 105.

<sup>3</sup> Sir Ed. Coke's Inst. iv. c. i. pp. 50, 51.

ence, and the rights and freedom of their constituents, resorted to various measures to prevent them<sup>1</sup>; and even a declaratory statute was enacted, as we have already seen<sup>2</sup>, “ That there be no law made, neither by addition, neither by diminutions, by no term or terms, which shall change the intent of their petitions:” but this very statute itself having been suppressed, and all precautions proving of no avail, and having suffered long, the Commons at length resolved to take the remedy into their own hands. Accordingly, towards the end of Henry VI.’s reign and beginning of Edward IV.’s, they began the practice continued until the present time, of drawing up, in the full and complete form of acts of Parliament, in their own House, whatever measures they desired should pass into laws, and thereby left nothing to be added, falsified, or suppressed.<sup>3</sup>

And this improvement brought in another; for until this period the petitions had been written in Latin or in French, but afterwards in the English language.

In this summary of the changes in the manner of enacting laws, we see this remarkable fact,—that though, by the ancient and invariable custom of Parliaments, the statutes had been drawn up by the judges, after the conclusion of Parliament, and in such words and forms as they thought fit; yet

<sup>1</sup> Rolls of Parl. 6 Ric. 2. § 53. 2 Hen. 4. § 21. 8 Hen. 4. § 65.

<sup>2</sup> Statute 2 Hen. 5. § 22. Rolls of Parl.

<sup>3</sup> Rolls of Parl. from Edw. IV.’s Reign; and Sir Matt. Hale’s Hist. of the Common Law, p. 15.

that this custom was annulled by the House of Commons, by its own powers and authority, without the aid of statute, and the language of the statute laws changed, and the forms of making them totally inverted. Yet in this the House of Commons acted in strict conformity with higher and paramount laws of Parliament, and without which Parliament could not exist; namely, the independence of their House, and the rights of their constituents.

2d Precedent. Assumption of the privilege of examining and determining upon the elections of their own members.

It is most evident from the records of Parliament, that neither the qualifications of electors, nor the due or undue returns of members, were anciently tried or determined by the House of Commons.

A few instances will serve to show the ancient custom of Parliament.

In the 7th of Richard II., the election and returns of a burgess for the borough of Shaftesbury being challenged by the inhabitants as unduly made, they prayed remedy, by a petition addressed to the King, Lords, and Commons.<sup>1</sup> This petition, Mr. Prynne informs us, is the first regarding undue elections that is to be found. And, "that from the reign of Henry III. until the reign of Henry IV., and many years after<sup>2</sup>," "the King and the Lords were the sole judges of void and double elections,

<sup>1</sup> Brief Register of Writs, pp. 118—122. <sup>2</sup> Brevia Parl. Red. pp. 286, 287.

<sup>3</sup> Brief Reg. of Writs, part ii. p. 165.



and not the Commons' House, who had no authority or jurisdiction to hear or determine any complaints concerning elections, either by the custom of Parliament, the writs of elections, or any other law, statute, or authority, but only the King or Lords."<sup>1</sup>

In the 5th year of Henry IV.'s reign, the House of Commons drew up the following petition, and presented it to the Lords: — "That the writs of summons to the sheriffs of Rutland returned were not sufficient or duly returned, as the Commons conceived; therefore the Commons prayed our Lord the King, and the Lords in Parliament, that this matter might be duly examined in Parliament, and, if fault were found, that punishment might be inflicted."<sup>2</sup>

The parties being duly examined, and the case considered in the said Parliament, it was decided that the sheriff should amend the return; and that he should be imprisoned, and his fine placed at the King's disposal.

Again, in the 29 Henry VI., a petition was presented to the King in Parliament by the freeholders of Huntingdonshire, which prayed that an election challenged as illegally made might be tried, amended, and justice done.<sup>3</sup>

These examples, with others that might be ad-

<sup>1</sup> Brief Reg. pp. 119, 120.; and Plea for the Lords. Glanville's Reports, Pref. pp. 11—20. Luder's Reports, Pref. p. 28.

<sup>2</sup> Rolls of Parl. 5 Hen. 4. § 38.; and Prynne's Plea for the Lords, p. 47.

<sup>3</sup> Brevia Parl. Red. part iii. p. 158.

duced, prove that by the custom of Parliament the trial and decision of contested elections were not, as in later times, the sole and exclusive jurisdiction and privilege of the House of Commons.<sup>1</sup>

This fact is further illustrated by the statute law. In the 7 Henry IV., a declaratory law had been made, "to preserve the liberties and franchises of the elections of knights for the shires," and the form of election prescribed; but, as no penalty had been inflicted, it became necessary to supply this defect by the statute 11 Henry IV. c. 1., in which is the following clause: — "It is ordained that the justices assigned to take assizes shall have power to enquire in their sessions of such returns made; and if it be found, by inquest and due examination before the said justices, that any sheriffs have made, or hereafter make, any returns contrary to the tenor of the said statute, that then the said sheriff shall incur the penalty of 100*l.*, and the knights of the counties shall lose their wages."<sup>2</sup>

And this statute is enforced by 6 Henry VI. c. 4., by 8 Henry VI. c. 7., and 23 Henry VI. c. 14.

Of these statutes Lord Keeper Atkins observes: "And all this depends upon the enquiry made by the judges of assize. At this time surely this matter of elections, and the examining and determining of the right, was not held so sacred and so incommunicable a thing as some would have it

<sup>1</sup> Glanville's Reports, Preface, pp. 11, 12.

<sup>2</sup> Statutes of the Realm.

now; for by this statute it is referred to the judges of assize.”<sup>1</sup>

So long as elections were tried by juries and the judges of the common law, no great or lasting injustice was to be feared. But no sooner had the priests become all-powerful in the state, — which, as we have seen, happened in the reign of Henry VI.<sup>2</sup>, — than they suspended the assizes, and gave the sheriffs grants of their offices for life<sup>3</sup>; who, consequently, became the mere tools of ministers. They transmitted the writs for elections, or withheld them at pleasure, as served their ends; or returned persons upon false indentures, who never had been elected at all.

The consequence was, as had been foreseen, that, as no redress could be had in courts of law, complaints against illegal elections were addressed to Parliament, and tried by the Lords, the majority of whom were priests; or else by reference to the lord chancellor, then uniformly appointed from the clergy. And thus began that long and constant struggle for the jurisdiction over elections between the Chancery on the one hand, supported by the King and the clergy, with the House of Commons on the other.

It is no longer possible to relate the commencement of this contest; for the Rolls of Parliament kept by the Lord's clerks give a short and garbled

<sup>1</sup> Tract on Election of Members to Parliament, p. 141.

<sup>2</sup> Rolls of Parl. 8 Hen. 6. § 53.

<sup>3</sup> Id. 23 Hen. 6. § 35. 39. 48.

account of transactions, and cease in the year 1503; and the journals of the House of Commons have been either lost or destroyed until the reign of Edward VI.<sup>1</sup> But by the journals in the reign of Queen Mary, it appears that the House of Commons was then in possession, though not undisputed, of the power of determining on the qualification of the members returned.<sup>2</sup> This however is remarkable, that there are not in the journals of that reign any traces entered of complaints of illegal elections, though undoubtedly many had been made. For “in Queen Mary’s first Parliament, in many places of the country, men were chosen by force and threats; and in other places those employed by the court did by violence hinder the Commons from coming to choose; and in many places false returns were made, and some were violently turned out of the House of Commons.”<sup>3</sup>

During the entire reign of Elizabeth, this great question was contested between the Crown and the Commons.<sup>4</sup> On the part of the Crown it was contended, that as the writ for election issued out of, and was returnable into, the Court of Chancery, the Lord Chancellor was the sole and proper judge of the due execution of the writ, and consequently of the legal qualification of the elected. On the other hand, the House of Commons insisted that

<sup>1</sup> Journals of the House of Commons.

<sup>2</sup> Glanville’s Reports, Preface.

<sup>3</sup> Burnet’s History of the Reformation, vol ii. p. 252.

<sup>4</sup> D’Ewes’ Journal, p. 393.

the sole and exclusive right of trying and deciding the elections of their own members, was lodged in themselves.<sup>1</sup>

And that this assumption was justifiable and indispensable to their independence and their constituents' freedom of election, is evident from the artifices of the Chancellors; who, at the mere suggestion of individuals, issued writs for new elections in the place of members alleged to be dead, though actually alive, or sick, or absent, or upon other pretences, which were never wanting to remove a member obnoxious to the court.<sup>2</sup>

And, therefore, the House of Commons took the remedy of this abuse into their own hands by an order: — "That during the sitting of Parliament there do not at any time any writ go out for the choosing and returning any knight, citizen, or burgess, without the warrant of this House first directed to the clerk of the Crown; according to the ancient jurisdiction and authority of this House in that behalf accustomed and used."<sup>3</sup>

Again, in the year 1586, the House proposing to consider an undue election for the county of Norfolk; the Court took the alarm, and insisted that the merits of the election were matters the House of Commons had no right or business to enquire into, and that it only belonged to the charge and office of Chancellor; and the Queen

<sup>1</sup> D'Ewes' Journal, p. 397.

<sup>2</sup> Journals of the House of Commons, 16th and 18th Jan. 1580.

<sup>3</sup> *Ibid.* 1st March, 1580.

sent a message to the House, "that it was in truth a thing impertinent for this House to deal with." But the House continued firm.

At length this contest in the following reign ended in favour of the Commons. Sir Francis Godwin had been returned for Buckinghamshire : but being an outlaw, the Clerk of the Crown refused to receive his return, and a new election was made. The House, after examination, found Sir Francis duly returned.<sup>1</sup> The Lords "desired a conference upon this case at the desire of the King, who thought his honour touched." The Commons consented to attend the King ; who ordered, "as an absolute King, a conference between the House and the judges, and that a report of it should be made to the council."<sup>2</sup> The Commons weakly yielded to the King himself the decision of the question, who resolved that a new writ should be issued. But, ashamed of so base a concession, and perceiving its inevitable consequences, they appointed a committee to draw up a declaration of their privileges. In this they declare, "That the freedom of election has been injured; and that by the same right it might be at all times in a Lord Chancellor's power to reverse, defeat, reject, and substitute all the elections and persons elected over the realm."<sup>3</sup>

"Neither thought we that the Judges' opinions (which yet in due place we greatly reverence)

<sup>1</sup> Commons' Journals, 22d March, 1604.

<sup>2</sup> Id. 27th March.

<sup>3</sup> Id. 20th June.

being delivered, with the common law which extends only to inferior and standing courts, ought to bring any prejudice to this High Court of Parliament, whose power being above the law, is not founded on the common law, but have their rights and privileges peculiar to themselves."

And again the House declares, " We vouch that the House of Commons is the sole proper judge of the returns of such writs, and of the election of all such members as belong unto it, without which the freedom of election were not entire ; and that the Chancery, though a standing court under Your Majesty, but to send out those writs, and receive those returns, and to preserve them. Yet the same is done only for the use of Parliament ; over which neither the Chancery, nor any other Court, ever had, or ought to have, any jurisdiction."

Here ended this protracted contest between the Kings and the Commons ; the one party laboured to subject all elections to their own arbitrary will, and thereby the Parliament itself : the other assumed, indeed, a jurisdiction unknown to the ancient customs of Parliament, and opposed to the express enactments of statute law, but justifiable, constitutional, and their bounden duty to assert, because it was the sole security for the independence of their House and the freedom of election ; without which, Parliament had failed in the very end of its institution, and ere now, perhaps, had been abolished.<sup>1</sup>

<sup>1</sup> Hatsell's Precedents, vol. iii. Appendix.

3d. Precedent. Assumed powers of the House of Commons to enforce their privileges by orders of their own House.

The right to personal security, and to freedom from the interruptions of other courts, has in all ages been a privilege equally of the Peers and of the Commons. It is coeval with the existence of Parliament, because absolutely essential to the performance of its duties. But in different ages, the Commons have been forced to adopt new powers of maintaining this privilege, and their adoption affords another proof of the great principle of the Constitution here enforced. These assumed powers will be most readily explained by examples.<sup>1</sup>

In the 5 Henry IV. a statute was made upon the petition of the Commons, that the lords, knights, citizens, and burgesses, and their servants coming to Parliament, may be secured against assaults and murder, then frequent, and that the murder of members or their servants may be made treason. This the king refused. But one Savage, who had assaulted a member's servant, was ordered to render himself to the King's Bench, and double damages to be imposed by the judges. And the like for all future cases.<sup>2</sup>

But assaults upon members becoming more and more frequent, especially after the county electors were disfranchised, upon a daring attack made

<sup>1</sup> Hatsell's *Precedents of the House of Commons*, pp. 1, 2. 9. *Elsinge*, p. 184.

<sup>2</sup> *Rolls of Parl.* 5 Hen. 4. No. 78., and *St.* 5 Hen. 4. c. 6.



upon a member for Oxfordshire, another statute was made reciting the former, but applying no better remedy.<sup>1</sup> And in the 23 Henry VI. the Commons were forced again to petition that the law be enforced.<sup>2</sup>

Again the privilege from arrest followed a similar course. Thus in 8 Henry VI. the Abbot of Westminster having arrested the servant of a member, a private act of Parliament was made, at the petition of the Commons, for his discharge.<sup>3</sup>

In the 31 Henry VI. the Commons presented a similar bill for the discharge of Thomas Thorp the Speaker, imprisoned for a trespass against the Duke of York, President of the House of Lords, and of Walter Rayle, a member.<sup>4</sup>

The House of Lords referred the case to the Judges, who decided against the discharge, to which the Lords agreed. And the House of Commons were commanded to choose another Speaker, which they did.

Similar special acts of Parliament were passed in the 39 Henry VI., the 14 Edward IV., 17 Edward IV., and 1 Henry VII.<sup>5</sup>

Hitherto the House of Commons had in no instance proceeded to deliver any member by their own orders, but uniformly a special act of Parliament was passed for each particular case, to enable the Lord Chancellor to issue a writ for his release.<sup>6</sup>

<sup>1</sup> St. 11 Hen. 6. c. 11. Parl. Rolls in Henry VI.'s reign.

<sup>2</sup> Rolls of Parl. No. 41. 23 Hen. 6.

<sup>3</sup> Id. No. 57. 8 Hen. 6.

<sup>4</sup> Id. No. 25—29.

<sup>5</sup> Rolls of Parl.

<sup>6</sup> Hatsell's Precedents, vol. i. p. 52.

The loss or destruction of Parliamentary records leaves no means of discovering how long this course of procedure by special acts of Parliament was maintained, nor the grievances unredressed, that obliged the House of Commons to apply a remedy themselves. But in the 34 year of Henry VIII.'s reign, a member of the House of Commons having been arrested, the House released him by their own order, and the parties who opposed the release were imprisoned by the sole authority of the House, and by the self-same forms as are used at this day.<sup>1</sup>

We see, therefore, in the assumption of these new forms of maintaining their privileges, another proof of the great principle that the independence of the House of Commons is a supreme and paramount law in the Constitution of Parliament, to which must yield all other minor laws and customs, how ancient soever they may be.

Nor is this general rule peculiar to the Commons, but shared equally by the House of Lords, as the history of their privileges abundantly proves.

In reflecting upon these various assumptions of new powers by the House of Commons, one fact will be observed to be common to all, namely, that the right pre-existed, and that the form only was new. For by the Constitution, no law could be enacted without the consent of the Commons, no election could be legal unless freely made, no

<sup>1</sup> Hatsell's Precedents, vol. i. pp. 56, 57.

member could be disturbed in the performance of his duties. But as the customary forms of Parliament had been found ineffectual, they assumed new, to defend these established rights.

Let us now apply this law and custom of Parliaments to the reform of abuses in the Representation.

Here, too, we may observe, that it is not the right that is doubtful, but the form that is defective. For that abuses exist is self-evident, and that in many instances elections neither are, nor can by possibility be made, agreeable to the statute and common laws of the land, which it is the peculiar and unquestionable jurisdiction of the House of Commons to see enforced.

There is, therefore, an inherent and pre-existing right to have those abuses reformed; and the reform demanded has been proved to be, not the usurpation of new, but the re-establishment of ancient rights. The legal right then exists; it is the form alone that is defective. But we have seen that by the laws and customs of Parliament, the House of Commons have the privilege, and have in all times exercised that privilege, of assuming from time to time new forms of maintaining the independence of their House, and the freedom of elections. Was the former exercise of this privilege more necessary than now? Shall the independence of the House of Commons depend upon the will of the House of Lords? Who, with reason, can be-

lieve that new abuses will not arise, new cases not be found with circumstances different from any former, which time alone can discover? Yet these new abuses, as they may appear, ought, and by the laws and practice of Parliaments have been, proceeded with by parity of reason, according to that great maxim of justice, “*Ubi est eadem ratio, ibi idem est jus;*”—where is the same reason, there is the same right.

Hence it is that the privileges of Parliament cannot be defined, being, as Judge Blackstone justly observes, “principally established in order to protect its members, not only from being molested by their fellow-subjects, but also more especially from being oppressed by the power of the Crown. If, therefore all the privileges of Parliament were once to be set down and ascertained, and no privilege to be allowed but what was so defined and determined, it were easy for the executive power to devise some new case, not within the line of privilege, and under pretence thereof to harass any refractory member, and violate the freedom of Parliament.

“The dignity and independence of the two Houses are therefore in great measure preserved by keeping their privileges indefinite.”<sup>1</sup>

II. Of the right of the House of Commons to reform the abuses in the Representation by its exclusive jurisdiction over the election of its own members.

<sup>1</sup> Commentaries, b. i. c. 2. p. 162.

Although, by the Constitution of England, no statute can be enacted unless by the united wills of the King, of the Lords, and of the Commons ; yet each of them is invested with rights, powers, and privileges peculiar and independent of the other two.

Thus, the King, as Supreme Head of the State, is by the Constitution invested with rights which regard either his person or else his royal political capacity, and then called his prerogatives ; powers by long experience known to be indispensable to the good government and protection of his people, and therefore inseparably united to the Crown throughout all ages whereof we have any knowledge. Of these prerogatives, some have relation to the nomination of his counsels in ordinary, some to war, some to jurisdiction, some to the military power of the State, or to its peace, or to its revenue, or to its trade and commerce, with other high rights of the Crown.<sup>1</sup>

In like manner the House of Lords is by the Constitution invested with, and has in all times exercised, rights, powers, and privileges peculiar to itself ; as, for example, “ that whatever matter arises concerning that House of Parliament ought to be examined, discussed, and adjudged in that House to which it relates, and not elsewhere<sup>2</sup>,” their privilege to determine finally all claims to be

<sup>1</sup> Sir Math. Hale's *Analyses of the Law*, sects. 3, 4, 5, 6, 7, 8, 9 ; and his *Prerog. Regis*, MS. Br. M. *passim*.

<sup>2</sup> Blackstone's *Comm.* b. i. ch. 2. p. 663.

members of their House ; their privilege to decide upon impeachments by the Commons ; and their jurisdiction in the last resort, a privilege essential to the security of freedom and property, as all experience proves ; where the decisions, being given by the Judges of the land, by the authority of that House and under its protection, become a power too mighty to be opposed ; and where Justice, in the wildest commotions of society, may hold her even course.

In like manner, the House of Commons is by the Constitution invested with rights, powers, and privileges peculiar to itself, which form a part, and an important part, of the laws and customs of Parliament ; and the maxim already quoted regarding the Lords, is of the like force regarding the Commons, namely, " that whatever matter arises concerning the House of Commons, ought to be examined, discussed, and adjudged in that House to which it relates, and not elsewhere." And the matters so adjudged by the House of Commons, are not decisions of the Commons alone, but in style and in effect, and by the laws of Parliament, are decisions of the entire Parliament, although examined, discussed, and finally determined by that House, without the intervention of the King or of the Lords.

" The House of Commons," says Mr. Hatsell, " as to privileges, elections, and cognizance of their own members, are a complete court of justice by themselves. The rules and proceedings of the House of Commons are part of the law of Parlia-

ment, and the law of Parliament is the chiefest and highest part of the *Lex terræ*. Whatever is done, either in the House of Lords, or House of Commons, is said to be done in Parliament, which is the ancient and most constitutional manner of describing their proceedings.”<sup>1</sup>

The jurisdiction of the Commons over the elections of their own members, is thus defined by a Resolution of the House: —

“According to the known laws and usages of Parliament, it is the sole right of the Commons of England in Parliament assembled (except in cases otherwise provided for by act of Parliament), to examine and determine all matters relating to the right of election of their own members.

“And according to the known laws and usage of Parliament, neither the qualification of any elector, nor the right of any person elected, is cognizable or determinable elsewhere than before the Commons of England in Parliament assembled, excepting such cases as are specially provided for by act of Parliament.”<sup>2</sup>

In the reign of James I. (1604), this right being intermeddled with by the King and House of Lords, the House of Commons told their Lordships, “that it did not stand with the honour of the House to give account to their Lordships of any of their proceedings or doings.”<sup>3</sup> And they in-

<sup>1</sup> Hatsell's *Precedents of the House of Commons*, vol. iii. p. 36.

<sup>2</sup> Hatsell's *Precedents*, vol. iii. p. 312. App.; and *Journals of the House of Commons*, 14th Jan. 1703,

<sup>3</sup> *Id.* p. 314.

formed the king, "That they were a part of the body to make laws, but for any matter of privileges of their House, they are and ever have been a Court of themselves, of sufficient power to discern and determine without the Lords, as the Lords have always used to do theirs without them." "And they cannot but take notice of that unreasonable as well as unnatural insinuation, whereby their Lordships endeavour to separate the interests of the people from their representatives in Parliament, who pretend to no privileges but upon their account and for their benefit."<sup>1</sup>

And in the celebrated declaration of the privileges of the House of Commons, made upon this occasion, they further inform the King, "That the ancient rights of the subjects of this realm, chiefly consist in the privileges of this House of Parliament; that their privileges and liberties are their right and due inheritance, no less than their very lands and goods; and that they cannot be withheld from them, denied, or impaired, but with apparent wrong to the whole state of the realm."<sup>2</sup>

Such being the jurisdiction of the House of Commons to determine solely, exclusively, and finally, the qualification of all electors, and the right of all persons elected to be members of their House; let us next consider by what laws they are to be guided in their determinations.

Sir Edward Coke informs us, "It is the Lex et

<sup>1</sup> Hatsell's Precedents, vol. iii. App. p. 317.

<sup>2</sup> Id. vol. i. pp. 232, 233. Petyt's Jus Parl. p. 230.



Consuetudo Parliamenti that all weighty matters in any Parliament moved concerning the Peers of the Realm, or Commons in Parliament assembled, ought to be determined, adjudged, and discussed by the course of Parliament, and not by the civil law, nor yet by the common law of the realm used in inferior courts<sup>1</sup>, which was so declared to be *secundum legem et consuetudinem Parliamenti* concerning the Peers of this Realm, by the King and all the Lords Spiritual and Temporal; and the like, *pari ratione*, is for the Commons, for any thing moved or done in the House of Commons.”<sup>2</sup>

Again, in that celebrated and often-cited declaration, which was the last struggle made by the Crown to rob the Commons of this jurisdiction, they say, “Neither thought we that the judges’ opinions (which yet, in due place, we greatly reverence) being delivered with the common law, which suits only to inferior and standing courts, ought to bring any prejudice to the High Court of Parliament, whose power being above the law, is not founded on the common laws, but have their rights and privileges peculiar to themselves.” “And it was clearly conceived by the said committee, and so reported to the House and ordered accordingly, ‘That the Commons in Parliament are not to be concluded by the indentures or returns of any county, city, borough, or port, if the same be not warranted by a due election which

<sup>1</sup> Rolls of Parl. 11 Ric. 2. No. 7.

<sup>2</sup> Sir Ed. Coke’s 4th Inst. c. i. p. 15; and Hatsell’s Prec. vol. i. p. 307.

ought to be the ground of every return in Parliament. And albeit in other inferior courts of the common law, the court and the party in that suit, are concluded by the false return of the sheriff, and the party aggrieved left to the action on the case. :

“ ‘Yet in Parliament, because the Commonwealth hath an interest in the service of every particular member of the Commons’ House of Parliament; and this court and council of state and justice is guided by peculiar, more high, and politic rules of law and state, than the ordinary courts of justice are in matters between party and party; and if in case of a false return to Parliament the House of Commons should thereby be concluded, then it would be in the power of the sheriffs to fill the Parliament with persons never duly chosen, who, by presumption, will not be indifferent, and so may be a great means to overthrow or much prejudice the commonwealth, for which no fine or punishment to be imposed upon the sheriff can be compensation sufficient.’ ”<sup>1</sup>

And this declaration advances nothing but what was then, and continues still to be, the law and practice of the House of Commons.<sup>2</sup>

Sir William Blackstone says, “ The maxims upon which they proceed, together with the method of proceeding, rest entirely in the heart of the Parliament ” (that is, of either House) “ itself;

<sup>1</sup> Glanville’s Reports, p. 56.

<sup>2</sup> Commons’ Journals, 11 Nov. 1586. Hatsell’s Precedents, vol. ii. p. 80. note.

and are not defined and ascertained by any particular stated laws.”<sup>1</sup>

The House of Lords themselves have admitted that the House of Commons are *not* bound to determine in matters of election according to the laws of the land, in the following resolution:—

“On the 2d of February, 1770, it was moved in the House of Lords to resolve, ‘That the House of Commons, in the exercise of its jurisdiction, in matters of election is bound to judge according to the laws of the land, and the known and established laws and customs of Parliament, which is part thereof.’ This proposed resolution was negatived. It was then moved and resolved, ‘That any resolution of this House, directly or indirectly impeaching a judgment of the House of Commons, in a matter where their jurisdiction is competent; final, and conclusive, would be a violation of the Constitutional Rights of the Commons, tend to make a breach between the two Houses of Parliament, and lead to general confusion.’”<sup>2</sup>

It is therefore evident, that the House of Commons, in the exercise of their right to determine who shall be electors and who shall not, and who shall be elected and who shall not, by the laws and customs of Parliament, are not obliged nor yet accustomed to observe the rules of the common law, “whose power, being above law, is not

<sup>1</sup> Commentaries, b. 1. c. 2. p. 163.

<sup>2</sup> Journals of the House of Lords, 2d Feb. 1770.

grounded on the common law." Nor are their decisions to be evaded nor concluded by the outward seeming and form of returns, "unless warranted by due election." Nor are they a judicature bound down by rules and precedents of their own, but a court and council of state political and supreme.

And in this their jurisdiction over elections follows the nature of all their other privileges, which, as we have seen, have this quality in common, that a right pre-existing sanctions new measures to maintain it.

We shall now proceed to explain, by examples chosen from different classes, those general powers invested by the constitution in the House of Commons regarding who shall, and who shall not, be members, or eligible to sit in their House.

First precedent : — In the year 1549, Lord Russell, eldest son and heir of the Earl of Bedford, having died, his next brother, Sir Francis Russell, succeeded in his rights, and being a member of the House of Commons, a question arose, whether he should or should not preserve his seat ; for, by the customs of Parliament the eldest sons of peers were not then eligible to represent counties, cities, nor boroughs, and this continues to be the law of Scotland to this day.<sup>1</sup>

But on the 21st January, 1549, the House of Commons resolved as follows : — " Ordered that Sir

<sup>1</sup> See the *Brevia Red.* *passim*.

Francis Russell, son and heir of the Earl of Bedford, shall abide in the House, in the state he was before.”<sup>1</sup>

This, says the Journal, was the first time the eldest son of a peer had been a member of the House of Commons; and in virtue of this resolution of the House, the eldest sons of peers have been eligible ever since.

Here is an entire class of persons admitted without any act of Parliament, who, by the usages of Parliament, had, in all former times, been incapable to be members of the House.

Second precedent:—It is evident that before the Reformation clergymen (not members of the House of Peers) were eligible to sit, and did sit in the House of Commons<sup>2</sup>, probably as possessed of estates, independent of their benefices; and this practice continued until the Reformation.<sup>3</sup> But no sooner had the House of Lords been cleansed of the abbots and priors, than the clergy set their wits to work how they should recover their lost ground.

Accordingly, in 1547, an attempt was made in convocation to have the Lower House of Convocation united to the House of Commons. “3d Session, 22d November. *Item*, That a petition be presented, that for certain urgent causes the Convocation of this House of Clergy be assumed and

<sup>1</sup> Journals of the House of Commons, 21st. Jan. 1549, and 9th Feb. 1575. Hatsell's Precedents, vol. ii. pp. 18, 19, 20, 21.

<sup>2</sup> Rolls of Parl. 20 Ric. 2. c. 15. 1 Hen. 4. No. 91. Hatsell's Prec. vol. ii. pp. 12, 13.

<sup>3</sup> Hody's Hist. of Convocation, part i. pp. 428, 429.

admitted into the Lower House of Parliament, as from ancient times has been accustomed.”—“ 7th Session. This day, by common consent, were nominated and appointed, Roland Merick, John ap Harry, John Williams, and Elizeus Prise, Doctors, solicitors to obtain the following, viz. That the petition made to have this House adjoined to the Lower House of the Parliament may be obtained.”<sup>1</sup>

In the next reign the same thing was again attempted, though not in so public a manner, by Bishop Ravis. Among the reasons offered to Queen Elizabeth for the admission of the clergy into the House of Commons is the following:—“ That her Majesty shall by this be sure of a number more in that assembly, that ever will be most ready to maintain her prerogative, and to enact whatever may make most for her Highness’s safety and contentment, as the men, that next under God’s goodness do most depend upon her princely clemency and goodness<sup>2</sup>;”—“ which,” Mr. Hatsell observes justly, “appears to be a strong constitutional argument against agreeing to the prayer of the petition.”

The House of Commons, seeing clearly the danger to the state from the admission of this host of placemen under the name of Convocation, wisely determined to exclude for the future all priests from their House; and therefore, on the 13th Oc-

<sup>1</sup> Hody’s Hist. of Conv. part i. pp. 429, 430.

<sup>2</sup> Burnet’s Hist. of the Ref. vol. ii. App. No. 16, 17, 18.

tober, 1553, they resolved, "That the burgess elected for Loo, being a prebendary of Westminster, whereby having a voice in Convocation, cannot be a member of this House."<sup>1</sup>

To this resolution the Commons have firmly adhered in all after attempts of the clergy to intrude themselves upon them.

In this precedent we see the House of Commons assume the privilege to exclude for ever a class of men, by the custom of Parliament eligible as members, as soon as their presence became dangerous to their independence.

Third precedent:—By the ancient customs of the cities and boroughs of England, their mayors or other chief magistrates were elected into office from year to year by their fellow-townsmen; the right and form of election differing in some measure with the local usage or by-laws of each borough.

So long as this laudable custom was maintained the cities and boroughs were truly represented by their magistrates. And, accordingly, we find that the mayor was usually one of the members elected.<sup>2</sup> But after the ancient magistracy had in so many places been supplanted by the new corporations, which, as we have seen, were sometimes elected by a select number, and sometimes self-elected, the former practice turned to an abuse, which required the correction of Parliament.

And, accordingly, the House of Commons took

<sup>1</sup> Journals of the House of Commons, 13th Oct. 1553, and 7th Feb. 1620. Hatsell's Prec. vol. ii. pp. 12, 13, 14.

<sup>2</sup> Hatsell's Precedents, vol. ii. p. 97. Brevia Parl. Red. passim.

the remedy into their own hands by the following resolution : — “ Resolved, That from and after the end of this Parliament, no mayor of any city, borough, or town corporate shall be elected, returned, or allowed to serve as a member of this House. And if it did appear that any mayor was returned a burgess, that presently a new writ should beawar ded for the choice of another in the room and place of the said mayor. And this to continue as an act and order of the House for ever.”<sup>1</sup>

Upon this act of the House of Commons Mr. Hatsell observes, that “ mayors had always been eligible by the law of Parliament, as appears by the general head, ‘ Mayor,’ in the book of names of members kept by the clerk of the Crown, and called over at the commencement of every Parliament.”<sup>2</sup>

In this precedent, we see a class of persons excluded from the House of Commons for ever, by the sole act of that House, in virtue of the jurisdiction it is invested with over its own members, and in obedience to that supreme and paramount law to which its other laws have in all ages been subjected, and which they are designed to serve, namely, the independence of the House and the freedom of elections.

It were an easy matter to adduce further instances, but enough have been given to prove that the powers of the House over its own members are not merely

<sup>1</sup> Journals of the House of Commons, 25th June, 1604, and 14th April, 1614.

<sup>2</sup> Hatsell's Precedents, vol. ii. p. 97.



judicial, but legislative too, and that its legislative powers have been sanctioned by the laws and customs of Parliament.

We now proceed to another class of the powers and privileges of the House of Commons, namely, those over the writs for elections.

As upon this subject much ignorance and error prevail, the following observations are due to the reader : —

From the earliest ages Parliaments appear to have been summoned by forms similar to those used at this day, which are for the King, by the advice of his council, to order the Lord High Chancellor of England to issue writs or letters to summon a Parliament at a certain place, and upon a certain day.

This has ever been a branch of the prerogative, and necessarily so, because in the interval of Parliaments there is no other constituted power in the state competent to perform this duty, the courts of law being subject not co-ordinate to Parliament.

But the exercise of this, as of all other prerogatives, is not left to the arbitrary will of the King and council, but founded, interpreted, and limited by law. And, therefore, so soon as Parliament is formed, the jurisdiction over writs devolves upon Parliament itself<sup>1</sup>, wherein each House is by its constitution invested with the privilege to examine, try, and determine finally, upon the legality or illegality of what has been done by the Crown.

<sup>1</sup> Journals of the House of Commons, 18th March, 1580.

each according to its separate nature and particular laws. This, however, they possess in common, that the writs to the Lords and to the Commons are not writs of grace but of right. “*Ex debito justitiæ*,” and have been so in all times, as is evident from records.

But to proceed to the writs for the election of the Commons. To understand their nature, we must consider the powers of that office in Chancery, whence those writs issue, and to which they are returned.

These powers we find explained by the House of Commons itself in that celebrated declaration of its privileges over the election of its own members, drawn up 20th June, 1604, which sets forth the law and custom of Parliament then in force and since observed.

In its third article, the House of Commons declare that the examination of the returns of writs for knights and burgesses is not due to Chancery, as is alleged and attempted to be established.

“Against which assertions, tending directly and apparently to the utter overthrow of the very fundamental privileges of our House, and therein of the rights and liberties of the whole Commons of our realm of England, which they and their ancestors, from time immemorial, have undoubtedly enjoyed under your Majesty’s most noble progenitors, —

“We vouch, that the House of Commons is the sole proper judge of returns of all such writs, and

of the elections of all such members as belong unto it, without which the freedom of election were not entire. And that the Chancery, though a standing court under your Majesty, be to send out those writs, and receive the returns, and to preserve them, yet the same is done only for the use of Parliament, over which neither the Chancery nor any other court ever had, or ought to have, any power or jurisdiction.”<sup>1</sup>

“ And it is the form of the Court of Chancery, as of divers other courts, that writs going out in your Majesty’s name are returned also as to your Majesty in that Court from whence they issue. Yet all proceed according to law, notwithstanding the writ.”<sup>2</sup>

Again, the committee appointed in the year 1623 to draw up general rules for the decision of elections, among whom were Sir Edward Coke, Mr. Selden, Mr. Glanville, and others profoundly skilled in the laws and practice of Parliament, inform us that “ albeit writs of summons for the Parliament issue out of Chancery, and are returned into the Crown-office of that Court, and there kept, yet the House of Commons in Parliament is a distinct Court of Record of itself, and the going forth of the writs from the Chancery is only as writs go forth from thence retournable into any other court or place; and the clerk of the Crown in Chancery hath but the custody of the writs and returns, as

<sup>1</sup> Hatsell’s *Precedents*, vol. i. pp. 232, 233. Petyt’s *Jus. Parl.* p. 231.

<sup>2</sup> *Id. ib.* and Glanville’s *Rep.* p. 82. preface.

for and to the use of the Commons in Parliament, and as records belonging to the House of Commons, and he is their officer and attendant upon the House for this special purpose.”<sup>1</sup>

Thus Mr. Speaker Onslow informs us, “The clerk of the Crown is an officer of the House of Commons, and his place is upon the steps at the Speaker’s feet, where he may sit and be present at debates. The clerk of the Crown is as much an officer of the Commons as of the Lords. And when he is a member *tersmare roehda.de* on his deputy.”<sup>2</sup>

The general law of Parliament regarding writs understood, we shall now proceed to explain it from examples of different sorts.

First precedent of the superseding of writs.

It is part of the Speaker’s office to sign warrants to the clerk of the Crown to make out new writs for the electing of members to serve in the room of members deceased, or whose seats are become vacant from any other cause.

But in the year 1672 an attempt was made by Lord Shaftesbury, then Chancellor, to arrogate to the Crown this privilege of issuing writs during a prorogation ; and accordingly, in the long recess, which lasted for twenty-two months, between 22d April, 1671, and 4th February, 1672, several writs were issued by the King’s order under the

<sup>1</sup> Glanville’s Reports, p. 85. Hatsell’s Precedents, vol. ii. p. 252. Journals of the House of Commons, 23 Eliz. 1580. vol. i. pp. 136. 151.

<sup>2</sup> Journals of the House of Commons, 25th March, 1698. Hatsell’s Precedents, vol. ii. pp. 245, 246. Note, last edition.

great seals for electing members to serve in the room of others who had died during that period.

The House, seeing in this an attack upon their privileges, resolved, " That during the continuance of the High Court of Parliament, the right and power of issuing writs for electing members to serve in this House, in such places as are vacant, are in this House, who are the proper judges also of elections and returns of their members." And on the 6th February, 1672, the House ordered the Speaker to issue his warrants to the clerk of the Crown for superseding all the writs for the election of members that were not executed before the first day of this session, and that elections upon writs issued since the last session are void, and the Speaker do make out his warrants for issuing writs for those places."<sup>1</sup>

By this resolution more than twenty members were expelled or discharged from being members.<sup>2</sup> And this upon an order of the House, proceeding upon a mere informality in the writs yet important in its consequences.

Second example of the suspension of writs by orders of the House of Commons : —

In the year 1689, the House " ordered that no new writ do issue for the borough of Stockbridge." The writs were suspended until Nov. 20th, 1694, on account of bribery.<sup>3</sup>

<sup>1</sup> Hatsell's Precedents, vol. ii. pp. 246, 247.

<sup>2</sup> Journals of the House of Commons, vol. ix. p. 264. index.

<sup>3</sup> Id. 1689, and 20th Nov. 1694.

4th Feb. 1700. — “ Ordered, That no writ do issue for Bishop’s Castle, on account of bribery.” Suspended for two years.<sup>1</sup>

27th Feb. 1700. — “ Ordered, That no writ do issue this session for electing any members to serve in this Parliament for the town and port of Winchelsea, on account of bribery.”<sup>2</sup>

7th March, 1700. — “ Ordered, That no writ do issue this session for the borough of Great Grimsby, on account of illegal practices.” Suspended beyond two years.<sup>3</sup>

27th Nov. 1702. — The House ordered that no new writs do issue for the borough of Hindon, on account of bribery.<sup>4</sup>

13th April, 1714. — “ Ordered, That no new writ do issue this session for electing a burgess to serve for the borough of Clitheroe, on account of undue practices.”<sup>5</sup>

17th Feb. 1710. — “ Ordered, That no writ do issue this session for Stepney, on account of illegal practices.” Suspended beyond two years.<sup>6</sup>

In 1770, the House ordered that no writ be issued to Shoreham, on account of bribery; and an act was passed afterwards to extend the franchise to the Rape of Bramber.<sup>7</sup>

14th Feb. 1775. — “ Ordered, That the Speaker

<sup>1</sup> Journals of the House of Commons, 1689, 20th Nov. 1694, and 2d April, 1702.

<sup>2</sup> Id.

<sup>3</sup> Id.

<sup>4</sup> Id.

<sup>5</sup> Id.

<sup>6</sup> Id. and 20th March, 1712.

<sup>7</sup> Id. and St. 11 G. 3. c. 55.

do not issue his warrant for a new election for Hendon, on account of bribery.”<sup>1</sup>

March, 1775. — “Ordered, That the Speaker do not issue his warrant to Shaftesbury, on account of an election void by bribery.”<sup>2</sup>

18th Feb. 1782. — “Ordered, That no writ be issued for Cricklade, on account of bribery;” and on the 17th May the act passed for extending the franchise.<sup>3</sup>

In 1804. — “Ordered, That no new writ be issued for the borough of Ailesbury, occasioned by bribery.”<sup>4</sup>

In 1813. — “Ordered, That no new writ do issue for Hilleston, on account of illegal practices.”<sup>5</sup>

In 1819. — “Ordered, That no writs issue for the boroughs of Penryn, Barnstaple, and Grampound, on account of illegal practices.”<sup>6</sup>

Lastly, the House ordered that no writ do issue to East Retford, and none issued for three sessions.<sup>7</sup>

These precedents sufficiently prove the privilege and jurisdiction of the House of Commons to withhold writs from all boroughs wherein the elections have not or cannot be made duly and truly according to the laws. They prove also that the writs may be withheld during the will of the House, for some have been denied for sessions, and others for several years.

<sup>1</sup> Journals of the House of Commons.

<sup>2</sup> Id.

<sup>3</sup> Id.

<sup>4</sup> Id.

<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> February, 1830.

But they prove, besides, that fourteen of the "rotten boroughs" (Shaftesbury and Grampound excepted) would have already been disfranchised had the House of Commons known the true nature and extent of their own privilege and jurisdictions, whereby the House is invested with the right, sole, exclusive, and final, "to determine who shall be electors and who shall not, and who shall be elected and who shall not;" whether those electors be few or many, an individual or a community.

Third class of examples :—Boroughs summoned to Parliament by authority of the House of Commons.

In the second chapter of this work it has been related that the House of Commons, in the 19th & 22d of James I.'s reign, and the 4th & 16th of Charles I., of its own authority and jurisdiction, caused writs to be issued to fifteen boroughs, some of which had discontinued to send members for more than three hundred years; and all had, for ages, been excluded from their poverty and decay.<sup>1</sup>

It has been already shown, that the motives for restoring these boroughs were to oppose the boroughs illegally created and dependent upon the Crown, by others, under the influence of the opposition party in Parliament, then struggling to maintain, by every means, the Constitution against the usurpations of the Stuarts; and this becomes evident, by observing who those were who intro-

<sup>1</sup> Journals of the House of Commons, vol. i. pp. 572. 576. 624. 782. 891. Vol. ii. pp. 36. 45. 49. 78. 86. Glanville's Reports, pp. 86—96.



duced and supported those measures, and the members immediately returned.

But in restoring those boroughs to franchises they had lost, and justly lost, by decay and consequent inability to make their elections according to law, certain privileges of the House are recognised, important to be observed.

1st, In those fifteen instances is recognised, that when a claim is made by a town to the right of returning members to Parliament, that claim is to be tried and finally decided by the House of Commons alone, without the assent of the King or of the Lords, but solely and exclusively by the Commons themselves, in virtue of their jurisdiction over the members of their own House; and who are the only power in the state invested by the Constitution with authority to determine who can and who cannot sit there according to the laws of the land.

2d, In those fifteen instances we see recognised the general fact, that where the House of Commons have examined, tried, and finally determined that the claim of such a town to return members is well founded, that their right and privilege is to cause their decision to be immediately enforced by an "order of their House, to their Speaker, that a warrant issue forth under the Speaker's hand, directed to the clerk of the Crown, for a writ of election to that town whose claim had been recognised."

Having treated of the privileges and jurisdiction of the House of Commons over their own members,

we shall close this section by comparing the forms of enfranchising and disfranchising towns according to the Constitution, with the novel and illegal forms attempted in later times.

It has been already proved that, by the laws and customs of England, the right of towns to send members to Parliament was altogether independent of their being incorporated, or of their form of municipal government, or whether they had any magistracy at all; and that the elective franchise was a common right of the realm, common to all towns under the following conditions: — 1st, That the election should be made freely; that is, in the words of the statute of Westminster, “free from the force, menace, or malice of any great man.”<sup>1</sup> 2d, That the electors should be citizens in cities, and burgesses in boroughs, therein resident. 3d, That the members should be their fellow-townsmen, resident, dwelling, and free, and no others. And, 4th, That the towns represented should defray their members’ charges while serving in Parliament.

The towns able to fulfil these conditions had right to writs and to return members, those unable had no right.

Nor was there any power in the state that could enfranchise towns by law incapacitated, nor exempt them if capable; in other words, dispense with the law of representation.

It is plain the King had none, for the “rotten boroughs” are creations of known date, within

<sup>1</sup> 3 Ed. 1. c. 5. Statutes of the Realm.

memory of latter times, whereas the prerogatives are prescriptive, known and limited by law and usage; as Sir Matthew Hale says, "rights lodged in the King by the laws of the kingdom, the better to enable him to govern and protect his people."<sup>1</sup>

But the "rotten boroughs" were designed, as has been proved, as a means to outvote the representatives of the Commons in their own House, and tax the nation without its leave; in short, not for protection, but for pillage. And so grossly illegal and fraudulent were these boroughs, both in their creation and continuance, that Mr. Prynne insists, "that they may justly be suppressed and un-boroughed by a quo-warranto brought against them, and ought in justice to be disabled from electing and sending any burgesses for the future, as well for their disability and poverty to send and maintain burgesses resident within their boroughs, as for their manifold gross disorders, corruptions, and abuses, and for their fraudulent elections and false returns, which take up more time in the Committee of Privileges and Commons' House, than all public business of Parliament of highest concernment, which are greatly retarded by such disorderly elections."<sup>2</sup>

But enough has been already said of their illegality. As the King could not legally summon boroughs but according to the constitutional conditions, neither had he any arbitrary power to exempt them from sending members.<sup>3</sup> The declar-

<sup>1</sup> Sir Matthew Hale's *Analysis of the Law*, § 2.

<sup>2</sup> *Brevia Parl. Red.* pp. 237. 239.

<sup>3</sup> *Id.* p. 240.

atory statute of 5 Richard II. ordains, "that all persons and communities summoned to Parliament shall come, unless they can reasonably excuse themselves to the King." But this reason was the reason of the law, not the King's will, as will appear by a few instances.

In the 42 Edward III. the borough of Torrington petitioned to be relieved from returning members, alleging that it was not bound nor wont to return, and that the sheriff's precept was addressed to them from malice. The case was tried, the decision given for the town, and letters patent of exemption issued accordingly. But the allegations of the town were false, the sheriff's precept truly served, and Torrington continued to return members as before, notwithstanding its letters of exemption.<sup>1</sup>

Thus the borough of Colchester had letters patent of exemption, dated 12th December, 6 Rich. II. for five years, and the wages of the members were to be applied towards the repair of the town walls. But Colchester continued to return members in the 7th, 8th, 9th, 10th, and 11th years as before its exemption, being illegal.

Thus in the reign of Henry V. the magistrates of Newbury surrendered up their franchise to the King, but the House of Commons ordered them to send up members notwithstanding; and until they petitioned the House, stating their inability to sus-

<sup>1</sup> Brevia Parl. Red., fol. 239, 240. Notitia Parl. vol. i. p. 39., and vol. ii. p. 244.

<sup>2</sup> Brevia Parl. Red. fol. 240.

tain the charge, and their petition allowed, they were not exempted.<sup>1</sup>

Let us now compare the forms of enfranchising and disfranchising towns, sanctioned by the Constitution and immemorial customs of England, with the contrivances of modern times, the offspring of ignorance and corruption.

One important and striking fact is evident, that in no age is there one example to be found of any town being enfranchised or disfranchised by statute law.

It appears never even to have entered into the minds of your forefathers to imagine that statute law was required before a writ could be sent to summon a town to return members for the first time, or disfranchise it when fallen to decay.

And the reason is as evident as the fact itself; the enfranchising and disfranchising of towns were judicial not legislative acts; questions invariably determined by courts of law, not by the Legislature.

And, therefore, until the union of Wales with England no county nor town had ever been summoned to Parliament by statute law.<sup>2</sup> But Wales was a distinct principality, with a chancery and jurisdiction peculiar to itself, to which the writs of the English chancery did not extend, and which lay beyond the powers and jurisdiction of the courts of common law.

For the like reason, upon the union of the county

<sup>1</sup> Parl. Hist. vol. v. p. 538.

<sup>2</sup> St. 27 Hen. 8. c. 26.

palatine of Chester with England, a statute was enacted to enable that county and city to return members to Parliament.<sup>1</sup>

But Cheshire from the earliest ages had been a palatinate, with a distinct parliament of its own, wherein were enacted its own laws, and wherein were voted its own taxes, as has been shown, independent of the English Parliament, with a chancery and jurisdiction peculiar, and exclusive of the Chancery and courts of law.

And for the same reason a statute<sup>2</sup> became necessary to unite the county palatine of Durham, and enable it to send members to the English Parliament, which, before that, had had a miniature parliament of its own, and where the writs of the English Chancery did not extend.

These are the only instances of counties or towns summoned to Parliament by statute laws; but statutes of disfranchisement there are none. In them we see an invincible proof how absolute and universal the rule of the Constitution was that the elective right of individuals and of communities, like other rights, should be determined by the laws of the land; for never did the Legislature interfere, excepting in these instances, where the laws had no power to decide; an example of the maxim, that "*Exceptio firmat regulam in casibus non exceptis.*"

Thus, by the mere operation of law to the con-

<sup>1</sup> St. 34 Hen. 8. c. 13.

<sup>2</sup> St. 25 Ch. 2. c. 9. In 1672.

dition of towns, as they rose to wealth or fell to decay, so they were summoned to Parliament, or ceased to return, as has been already proved. And in this manner the changes in the representation were constant, tranquil, and slow.

Such was the Constitution, and such it still remains : for it is a birthright unalienable, that cannot be lost by any lapse of time or disuse ; for Parliaments are not its masters, but its guardians, as the records of all ages prove, and the opinions of the wisest men.

Let us now turn to the vain and futile attempts of modern times to remedy the abuses in the representation by the means of statute laws.

There is a brocard of the Roman jurisprudence to caution against rash judgments upon the institutions of antiquity, that "it is not for all the institutions of our ancestors that a reason can be given." "*Non omnium quæ a majoribus constituta sunt ratio reddi potest.*" Yet they may not be therefore the less wise ; for it has been truly observed by Blackstone of the common law, that oftentimes we are unable to discover its justice or reason until they appear too plain, from the mischiefs that follow its repeal.

We shall see this lesson of experience exemplified now.

The creation of the "rotten boroughs" has been already traced, their open violation of the laws proved, and that with them were brought in numberless corruptions, gross and rank, that gathered

from age to age. Yet what remedies did the Legislature apply to reform these notorious abuses? None. Did it desire, did it search for, did it attempt any reform? Never. From the Revolution until the enactment of the Granville Act in 1770, although the elections in the "rotten boroughs" continued to be made constantly and notoriously, illegally, fraudulently, and void, yet not one single borough was disfranchised.

It is true that in 1702 a bill was brought into the House of Commons to disfranchise Hindon for illegal practices; but this was changed into another, to unite it with the hundred, that both might vote together; and so this bill passed.<sup>1</sup> But even so modified it was rejected by the House of Lords.

But from the period of the Granville Act in 1770 a new spirit began, for now the Election Committees became independent of the Minister.

In 1771<sup>2</sup> a society of the electors of Shoreham for the sale of seats having been proved before a committee of the House, a bill was brought in to extend the elective franchise to the freeholders of the hundred, which became a law.<sup>3</sup>

In 1782, in consequence of corrupt and illegal practices in Cricklade, a similar statute extended its franchise to the freeholders of the neighbouring hundreds.<sup>4</sup>

<sup>1</sup> Journals of the House of Commons, 27th Nov. 1702, and 8th Feb. 1703.

<sup>2</sup> Id. 8th Feb.      <sup>3</sup> St. 11 Geo. 3. c. 55.      <sup>4</sup> St. 22 Geo. 3. c. 31.



And in 1804, for a similar reason, the elective franchise of Aylesbury was shared with its hundred.

These mixtures of county with borough representation were opposed equally to the spirit and to the practice of the Constitution, which had wisely distinguished the representation of the counties from that of the towns; a distinction founded upon the nature and occupations of men.

But these statutes were not designed as approaches towards the Constitution, but as the smallest departures possible from inveterate abuse; for no sooner did the House of Commons attempt the actual disfranchisement of boroughs, than they found their endeavours ineffectual.

In 1813 a bill passed the Commons to disfranchise Helleston, but was thrown out by the House of Lords.

A second bill passed the Commons, but was rejected by the Lords.

A third shared the same fate.<sup>1</sup>

In 1819 the Commons passed a bill to disfranchise Penryn, but it was lost in the House of Lords.<sup>2</sup>

In 1820 the Commons passed a bill to disfranchise Penryn, Grampound, Camelford, and Barnstaple, but this was thrown out by the Lords.<sup>3</sup>

Grampound was, however, subsequently disfranchised; and it is the only borough that ever was disfranchised by statute law.

The case of East Retford is fresh in the minds

<sup>1</sup> Journals of the House of Commons.

<sup>2</sup> *Id.* of this date.

<sup>3</sup> *Id.* of this date.

of all. One benefit resulted ; it opened the eyes of the public to the folly and inefficacy of similar attempts.

The recent rejection of the great measure of reform, which now fills with anxiety the breasts of all, might have been foreseen by any who had marked the fate of the former bills. But this event may be turned to a lasting benefit, if the House of Commons and the nation, profiting by long experience dearly won, will abandon this fruitless, illegal, and unconstitutional form of procedure by statute, and return to those forms sanctioned by the laws and immemorial usages of their ancestors.

The expression "illegal procedure by statute" may sound harshly in the ears of those accustomed to think that all procedure by statute must of necessity be legal.

Let such consider whether it be lawful for the House of Commons, the guardian in law of the elective rights, and of the laws enacted to protect them, to suffer those rights to be daily violated before their eyes?

Let those consider whether it be lawful for the Commons to resign their sole and exclusive jurisdiction of who shall, and who shall not be members of their House, into the hands of the Lords.

Is there any man so ignorant of the Constitution as to believe, that the one House of Parliament has the right to refer its privileges and independence to the arbitrement of the other? The privileges of the Commons are the privileges of

the country, and are declared to be “ held for the sole benefit of their constituents, whose property they are not less than their very lands and goods.”

The procedure by statute is illegal ; because it is contrary to, and in violation of, the Constitution, which neither knows nor sanctions any such procedure ; as is proved by the laws and usages of Parliament, which furnish no precedent of towns enfranchised or disfranchised by statute law.

It is in violation of the Constitution, because it places the independence of the House of Commons at the discretion and disposal of the House of Lords ; and the determination of the Lords at the will of the King, by his prerogative to create or not to create peers. In other words, the procedure by statute subjects the representation of the country to the prerogative of the Crown, which it never was subjected to in any age, nor ought to be.

It has been already proved from precedents, that the privileges of the House of Commons over the elections of their own members are of two natures : the one political and legislative, the other judicial ; but both sole, exclusive, and independent of the King and House of Lords.

The fundamental principle of their judicial privilege is thus expressed by the House of Commons in a resolution of its own :—“ That according to the known laws and usages of Parliament it is the sole right of the Commons of England in Parliament assembled to examine and determine all matters relating to the right of election of their

own members, excepting such cases as are specially provided for by act of Parliament.<sup>1</sup>

But there is no law that provides directly nor indirectly against the disfranchisement of "rotten boroughs," or against the enfranchisement of towns that, according to the law declared by the judgment of the House of Commons, ought to be summoned to Parliament.

And as, unquestionably, there are no such statutes, nor ever were, nor ought to be, let us turn to those statutes placed under the peculiar jurisdiction of the House to enforce the freedom of election.

The first is the statute of Westminster, which ordains: "And because elections ought to be free, the King commandeth, upon great forfeiture, that no great man, or other, by force of arms, nor by malice or menacing, shall disturb any to make free election." And an old manuscript adds, "free choosing in city, ne in boruz, ne in toune."<sup>2</sup>

The lord wardens of the Cinque Ports having usurped the power of nominating a member for each port, a statute was enacted in these words to correct this abuse, declaratory of the general law:—"Whereas the election of members to serve in Parliament ought to be free, and whereas the late lord wardens of the Cinque Ports have pretended unto, and claimed of right, a power of nominating and recommending to each of the

<sup>1</sup> Hatsell's Precedents, vol. iii. p. 312. App.

<sup>2</sup> Stats. of the Realm, 3 Ed. 1. c. 5. 1275.

Cinque Ports, the two ancient towns and their respective members, one person whom they ought to choose to serve as a baron or Member of Parliament; be it therefore declared and enacted, that all such nominations and recommendations were and are contrary to the laws and constitutions of this realm, and for the future shall be so deemed and construed, and hereby are declared to have been, and are void to all intents and purposes whatsoever, any pretence to the contrary notwithstanding.”<sup>1</sup>

Again, the statute 8 George II. c. 30. confirms and re-enacts the statute of Westminster in these words:—“Whereas by the ancient custom of this land all elections ought to be free, and whereas by an act passed in the 3d year of Edward I. it is commanded upon great forfeiture, that no man by force of arms, or by malice or menacing, shall disturb any to make free elections. And forasmuch as the freedom of elections of members to serve in Parliament is of the utmost consequence to the preservation of the rights and liberties of the kingdom.”<sup>2</sup>

These declarations of the rights of the Commons are enforced by resolutions of the House of Commons. On March 13. 1700, the House resolved “That for any peer of this kingdom, or lord-lieutenant of the county, to concern themselves in the election of members to serve for the Commons

<sup>1</sup> St. 2 Wm. & Mary. St. c. 7.

<sup>2</sup> St. 8 Geo. 2. c. 30.

in Parliament, is a high infringement of the liberties and privileges of the House of Commons.<sup>1</sup>

And this has become a standing order of the House of Commons renewed in every Parliament, though indeed nothing more than a declaration of the ancient laws of the land.

It is, then, evident that by the laws elections are to be made free from the "nomination" or "concernment" "of any peer or other;" it is most certain those laws are placed under the peculiar protection of the Commons, which, in truth, is nothing more than the right of self-defence against violation and wrong.

The right to remedy the abuses in the representation is then established, the form of obtaining this right is all that is wanting.

We have already proved, that by the laws and usages of Parliament, where a right in the House of Commons is established, but the forms of enforcing it inefficient, that it is a privilege of the House to assume new forms of maintaining those rights, though novel and unaccustomed. But here no new form is required; the novelty is the procedure by statute, which has grown out of those very corruptions that are themselves to be reformed. In fine, are the abuses to dictate the means to correct themselves, or are the ancient rights to be restored by the ancient forms?

3d, That the House of Commons possess the

<sup>1</sup> Journals of the House of Commons.

right to reform the abuses in the representation, in order to preserve their privilege of granting or withholding supplies.

Here no historical deduction is required ; for this privilege is unquestioned, and its abuse notorious and manifest to all.

This, the most important of all privileges, is a necessary consequence from the principle, " that the House of Commons is the only representative of the Commons of England, and that the Lords sit in Parliament for themselves."

Grants of money differ from laws in their forms and in their nature. In their forms they differ, because all bills for supplies must begin with the Commons, and there only, where they follow a procedure proper to themselves.

The House of Lords can add nothing, alter nothing, lessen nothing, of the grant ; but must pass all or reject all, contrary to the forms of legislation.

The King receives supplies from the Speaker in the name of the Commons, and to them only he returns thanks for the grant.

As supplies differ from laws in their forms, so do they entirely in their nature. Thus described in a resolution of the House of Commons in 1689, when the House of Lords attempted to interfere with this privilege, " Resolved, that all money aids and taxes, to be raised or charged upon the subject in Parliament, are the gift and grant of the Commons in Parliament, and are and always have been

and ought to be by the Constitution and ancient course and laws of Parliament, and by the ancient and undoubted rights of the Commons of England, the sole and entire gift, grant, and present of the Commons in Parliament; and to be laid, rated, raised, collected, paid, levied, and returned, for the public service and use of the Government, as the Commons shall direct, limit, appoint, and modify the same."

"And the Lords are not to alter such gift, grant, limitation, appointment, or modification of the Commons in any part or circumstance, or otherwise to interfere in such bills, than to pass or reject the whole without any alteration or amendment though in *ease* of the subject; as the kings or queens by the constitution and laws of Parliament are to take all or leave all, in such gifts, grants, and presents from the Commons, and cannot take part nor leave part, so are the Lords to pass all or leave all without diminution or alteration."<sup>1</sup>

The Commons have at all times jealously guarded this privilege, and with reason, for it is the citadel of freedom.

Mr. Hatsell enumerates 91 attempts by the Lords to wrest this privilege from the Commons; and he makes this remark, "that in whatever mode the Lords have at any time attempted to invade this right, the Commons have uniformly and vigorously opposed the attempt, and have

<sup>1</sup> Journals of the House of Commons, 15th May, 1689. Hatsell's Precedents, vol. iii. p. 124.



asserted their claim through such a long and various course of precedents, particularly from the time of the Restoration, that the Lords have now for many years desisted either from beginning any bill, or from making any amendments to bills passed by the Commons, which either in form of positive taxes or pecuniary penalties, or any other shape, might by construction be considered as imposing burdens on the people.”<sup>1</sup>

Such being the right, privilege, and law, let us turn and mark the violation of this law. While the Commons defended their citadel in front, the Lords rushed in from behind, mastered the place, and filled it with mercenaries.

The Commons found themselves outnumbered, outvoted, outbraved in their own House. In the words of Sir Edward Seymour, “was it reasonable that the Lords, who only represent themselves, should turn you out who represent the people?”<sup>2</sup> Is it not a fraud gross and palpable that Gatton, Orrery, and Sarum, should outvote the representatives of London or of Yorkshire, and tax them at will? Yet we have seen that for this very end they were created or maintained; namely, to pick the pockets of the people under the colour of law.

The Commons have for centuries defended this privilege against all attempts of the Crown, and of the Lords as a House; will they resign it to the

<sup>1</sup> Hatsell's Precedents, vol. iii. p. 147.

<sup>2</sup> Speech on the Triennial Act. Parl. Hist. vol. v. p. 759.

nominees of individual peers, because they are obtruders within their own walls?"

But no words can make the fact more notorious than it is, that until the "rotten boroughs" be disfranchised this privilege of the Commons to grant supplies is a mere cheat of state; for though voted in the Commons' House, they are voted by the nominees of the Lords, who commit that at second hand which in person is forbidden by law.

That great principle of the Constitution cannot be too often nor too deeply impressed, "that the privileges of the House of Commons are the rights of the people not less than their very lands and goods." The House is not the master but the guardian of its privileges, and is by the laws and constitution of Parliament bound to protect and enforce them.

To protect a privilege acknowledged and fixed by the laws of Parliament, through the form of statute, is a violation of the principles and usages of Parliament, which have invested each House with independent powers to enforce their respective rights.

But of all privileges the most jealously to be guarded against such a procedure, is this of taxation, which were to throw it at the feet of the Lords, or of the Crown to dispose of it at will.

In fine, this privilege being indisputable, and the right in the House of Commons fixed exclusively, by the constitution and laws of Parliament, the form by which that right shall be enforced rests by

the custom of Parliament solely and absolutely in the House of Commons itself, as has been already proved in all other privileges whatsoever.

But it may be asked, are the actual representatives of the country in numbers sufficient to enforce this privilege against the nominees of the proprietors of boroughs?

To this question let the reference be to the laws of Parliament: — “On the 12th June, 1604, Mr. Seymour, a party in the bill then under consideration, goes forth during the debate, agreeable to former order and precedent in like cases.”<sup>1</sup>

“On the 4th February, 1664, a member appeared to be somewhat concerned in interest, his voice is disallowed after a division.”<sup>2</sup>

“No member of the House may be present in the House when a bill or any business concerning himself is debating, but while the bill is but reading or opening he may.”<sup>3</sup>

Upon this law of Parliament Mr. Hatsell observes: — “The rule laid down in the two first instances is not in many cases sufficiently observed. It was always attended to in questions *relative to the seat of the member*, on the hearing of controverted elections, and has been strictly observed in cases of very great moment. But in matters of lesser importance, where the private interest of the member has been essentially concerned, it has been entirely neglected, contrary not only to the laws of

<sup>1</sup> Journals of the House of Commons.

<sup>2</sup> Id.

<sup>3</sup> Parl. Debates, vol. i. p. 141.

decency but of justice ; and it would be for the honour of the House of Commons if a rule which, 170 years ago, ‘ was agreeable to former order and precedent in like cases,’ was revived and established.”<sup>1</sup> Let this law be strictly enforced against all members for rotten boroughs, and the actual representatives of the country will find themselves a vast majority.

Let the House of Commons re-establish the ancient legal and constitutional procedure of enfranchising and disfranchising towns by legal jurisdiction, which by the laws and customs of Parliament is vested exclusively in their House.

For this great object, let the House resolve, 1st, That warrants shall immediately issue to its officer, the clerk of the Crown, that writs for elections be sent to all towns which, in the judicial discretion of the House, can and ought, according to law, return members to Parliament ; and let the House fix the qualification of voters, as by their jurisdiction they may legally do ; or leave it to the common law, whereby all inhabitant householders are voters who pay the accustomed rates, as has been proved.

2d, Let the House of Commons resolve that writs no longer shall be issued to such boroughs as the House in its judicial discretion shall determine to be “ unfit and unworthy by reason of their poverty ” to continue to return members ; let the present elections of these disfranchised boroughs be

<sup>1</sup> Hatsell’s Precedents, vol. ii. p. 170.

declared to be null and void, “and their members discharged to re-appear in the House;” and let the necessary warrants be sent to their officer, the clerk of the Crown, accordingly.

- This great measure accomplished, — and there is no law nor power in the state to bar its accomplishment, but on the contrary the Constitution and law demand and enjoin it, — let a statute be passed to reform those abuses that have been established by statute law.

THE END.

LONDON :  
Printed by A. & R. Spottiswoode,  
New-Street-Square.

1



